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Digest,

AND

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PUBLISHED WEEKLY.

NOVEMBER, 1848, TO APRIL, 1849,

INCLUSIVE.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

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CLOSE OF THE THIRTY-SEVENTH VOLUME.

THE Postscripts and Notices to Correspondents, inserted from time to time on the cover of the work, and which appear requisite to be preserved, are transferred to this place :—

PROVINCE OF THE BAR AND THE ATTORNEYS.

The Government Solicitorships, Stewardships, and other offices held by Barristers, which belong to Attorneys and Solicitors, are properly brought forward when complaints are made of the exercise by the latter of their legal rights in the Bankruptcy Courts, the Revising Barristers' Courts, and the County Courts ;—rights expressly conferred by the legislature for the purpose of saving unnecessary expense to the litigating parties. These are modern recognitions of the right of advocacy by attorneys. The ancient practice extended (under certain limits) to the Superior Courts.

The case of *Rex* v. *Berron*, 3 B. & Ald. 438, which has been referred to, as showing that an attorney is not permitted to act as an advocate before magistrates, merely decides that, pending an investigation before them, an attorney has "no right" to comment on the evidence. *Neither has a barrister ;* though both are often *permitted* to be present, to cross-examine witnesses and address the magistrates. It is different in summary convictions ; then they have a right.

Attorneys appearing and pleading in the District Bankruptcy Courts. — An able correspondent at Liverpool, admits, perhaps too readily, that the right in the District Courts is not the same as in the London Courts. Now it may reasonably be argued that, under the expression "*the* Bankruptcy Court," all the Courts in Bankruptcy are comprehended, just as *the* Court of Chancery includes the Courts of all the five judges. The Court of Review was excepted from the right given to the attorneys of "appearing and pleading." That and the Jury Court on the Trial of Issues, being expressly excluded, are not all others included, not only the Court of each Commissioner, but the Sub-division Court ? This, at least, requires to be further considered.

The communications from Yorkshire and Lancashire, on the subject of the recent discussions relating to the respective *Provinces of the Bar and the Attorneys*, have been received. Further hints and suggestions are requested from other parts of the country, in order that we may be well assured of the general feeling of the practitioners on this important subject. Specific facts and instances of grievance and prejudice to the public should be supplied whenever they occur. Our Correspondents will please to send such of the provincial papers as require early attention.

A letter from a Correspondent at Liverpool, showing that the ministerial duties of an attorney in bankruptcy matters (which cannot be performed by barristers) largely predominate in extent over his duty as an advocate, presents an important point in the discussion. Our Correspondent is, of course, aware that there is a bill before a Committee of the House of Lords, for consolidating and amending the Bankruptcy and Insolvency Laws, and that many solicitors have been examined before the Committee. The amendments he suggests will be effected along with that measure, and perhaps any separate enactment for the particular purpose suggested would be opposed, because it ought to be incorporated in the general bill.

PRE-AUDIENCE AT QUARTER SESSIONS.

In a recent instance, we understand that *two* members of the Bar, who alone attended at the Sessions, successfully opposed the hearing of solicitors. This appears to be an unwarrantable decision of the Magistrates. The Court of Queen's Bench, in a recent case, 32 L. O. 323, confirmed the decision of the Justices of Denbighshire, in refusing to hear the attorneys where not less than *four* barristers were present. But to give exclusive audience to *two* counsel is as injurious to the public as unjust towards the attorneys.

REDUCTION OF FEES IN CHANCERY, &c.

Under our old accustomed head of "Taxes upon the Administration of Justice," our readers are aware that we have, "many a time and oft," adverted to the enormous amount of fees paid in the several offices of the Court of Chancery, to the extent of nearly a quarter of a million. We rejoice to hear that there is a probability of a speedy and considerable reduction in the number and amount of fees now payable, and in the mode of collecting them. The multiplicity of small fees has always been a great grievance, rendering it necessary to keep long and minute accounts, liable to frequent mistakes if nothing worse.

There is a general feeling against stamps on law proceedings, (heretofore abolished,) and we are aware that many practitioners have a strong repugnance to their re-introduction ; but the stamps proposed in the Solicitor-General's Bill of last Session, and now recommended, would not be levied as a tax to be paid to the Chancellor of the Exchequer, but into the Fee Fund of the Court of Chancery, and when the plan shall be sufficiently explained, we think it will be deemed an undoubted improvement.

We understand also, that in lieu of the large payments for copies of papers in the Masters' offices, an arrangement will probably be made by which those copies will be made by the respective solicitors in the cause upon carrying in their papers, and supplied forthwith to the opposite party,—whereby much time will be saved in obtaining office copies, with the advantage of being prepared in a convenient and accurate form. This will be a great improve-

ment in practice, for which the profession was partly prepared by the evidence given by several practitioners before the Solicitor-General's Committee last Session, on Fees in the Courts of Law and Equity. Several of the council and other members of the Incorporated Law Society were examined on that occasion.

RETAINER OF COUNSEL—RULES OF PRACTICE.

It may be important, in order to prevent misunderstanding between members of the two branches of the Profession, to state that the Rules relating to the Practice of Retainers were submitted so long ago as July, 1847, not only to the Judges, but to the Benchers of all the Inns of Court, and to the Attorney and Solicitor-General, the Queen's Counsel, and Serjeants-at-Law;—and that all the suggestions received on the subject were carefully considered. It will be found on investigation that the greatest possible pains have been taken to obtain the concurrence of the Bar during nearly two years.

UNPROFESSIONAL PRACTICE.

It is clearly unprofessional to undertake business upon an understanding of "no cure no pay;" and that it must be left entirely to the discretion of the attorney if he should be unable to recover the debts, to make such reduction as he may think proper. This is all that a respectable client can expect. The letter of "A Young Attorney" at Liverpool, on this subject may thus be answered.

ANALYTICAL DIGEST OF CASES.

Our respected "Subscribers of Thirteen Years' standing" have not, we think, noticed the improvements in our Analytical Digest of all the reported Cases. That part of the work was formerly printed separately, at a considerable additional expense, and is now incorporated in the weekly work. The half-yearly Digest of our own Reports has been discontinued, because they are included in the general Digest. Each Number comprises a complete Section, such as the Law of Property and Conveyancing,—the Law of Wills,—the Construction of Statutes,—the Law of Attorneys,—Costs, &c. And the Reports are classed under the heads of Principles, — Practice, — Pleadings, — Evidence, &c.

A complete view is thus obtained of each entire subject; references are made to the preceding Sections contained in each Volume, and followed by a Table of Titles and Cases, so that the greatest facility of reference is obtained.

The former half-yearly Digest at the end of each Volume, contained only the LEGAL OBSERVER Reports. The present plan places in the hands of our readers every case as well in the regular Reports as in our own.

REPORTS DIGESTED IN THIS VOLUME.

Court.	*Reporters.*	*Abbreviations.*	*Vol. and Part.*
Lord Chancellor	Phillips	Phill.	Vol. 2, Part 4.
Master of the Rolls	Beavan	Beav.	Vol. 10, Parts 1, 2.
Vice-Chancellor of England	Simons	Sim.	Vol. 15, Part 3.
Vice-Chancellor Knight Bruce	De Gex & Smale	De G. & S.	Vol. 1, Part 2.
Vice-Chancellor Wigram	Hare	Hare	Vol. 6, Parts 2, 3.
Queen's Bench	Adolphus & Ellis, N. S.	Q. B.	Vol. 8, Part 5. Vol. 9, Parts 1, 2.
Common Pleas	Manning, Grainger, & Scott, N. S.	C. B.	Vol. 3, Parts 4, 5
Exchequer of Pleas	Meeson and Welsby	M. & W.	Vol. 16, Part 4.
	Meeson, Welsby, &c.	Exch. R.	Vol. 1, Part 3.
Practice Court, Queen's Bench, Com. Pleas, and Exchequer	Dowling & Lowndes	D. & L.	Vol. 5, Part 1.
All the Courts.	Legal Observer	L. O.	Vols. 35 & 36.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 4, 1848.

> ——"Quod magis ad nos
> Pertinet, et nescire malum est, agitamus."
>
> HORAT.

STATE OF LAW REFORM.

ACCORDING to the usual practice "in such case made and provided," we commence our new volume with a brief review of the various projects for the alteration, if not the amendment, of the law, which were under the consideration of the *last*, and may be fully expected to engage the attention of the *next* meeting of parliament. We shall arrange them in the order which appears most likely to affect the larger number of our readers.

1. On the *Law of Real Property and Conveyancing*, we hear that the Commissioners' Report is in a state of forwardness, and that a General Registry of Deeds will probably be recommended, combining, to some extent, the plans of Local with Metropolitan Registries. Our brethren in the country have not yet been so energetic on this as on a former occasion, when Lord Campbell's objectionable project was defeated. No doubt they wait till the Report has made its appearance, and the bill has been prepared for carrying the recommendations of the Commissioners into effect. They will then speedily form their opinion of the plan, and judge of its effect, as well on the public as on their own interests.

Besides this great question of a General Register, there are several other propositions affecting the landed interest. Amongst these are the extension of the Rights of Agricultural and Outgoing Tenants, proposed by the respective plans of Mr. Pusey and Mr. Crawford;—the Exemption of Small Tenements from Rates and Taxes, by Mr. Scrope;—and the alteration of the Game Laws, by Mr. Bright. Especially, also, we may anticipate the enlargement of the powers of the Commissioners to enfranchise *Copyholds*. The numerous meetings of the Stewards of Manors which took place in the latter part of the late Session, have been, we trust, productive of some definite plan which may meet the demands of the community for removing the injustice and impolicy of the present system, and introducing one which will at once settle and adjust the conflicting claims of lords, tenants, and stewards.

2. The extensive topic of *Equity Reform* has been of late repeatedly under consideration, and will doubtless be renewed in the next Session. The proposed alterations bear largely on our constant theme of "Taxes on Justice." 1st. There is the question of fees, their diminution both in number and amount. A better mode of collecting them was proposed by Sir John Romilly, namely, by abolishing all the "jingling of money" within the precincts of the Courts, dispensing with the host of fee collectors, and substituting stamps on the pleadings and proceedings. But this bill, which was introduced late in the last Session, and soon withdrawn, proposed only to improve the mode of collecting, not the *quantum*. 2ndly, Comes the proposition to give jurisdiction by petition in matters hitherto approachable only by bill and an-

swer. 3rdly. To empower the Masters to hear and dispose of certain matters in a summary way. 4thly. To amend the course of proceeding in the Masters' Offices, particularly in regard to continuous hearings from day to day, instead of hourly warrants. These and various other suggestions have been made by the Law Amendment Society and the Metropolitan and Provincial Law Association. They were also embodied in a petition signed by nearly all the principal firms of solicitors, several years ago, before the formation of either of those societies. And the Incorporated Law Society also made several important suggestions, particularly on the subject of the admission of evidence, analogous to the Common Law practice, whereby much time and large expense would be saved.

The objection, however, to all these improvements, is, that they will diminish the Fee Fund! And so long as there are large compensations and sinecures to pay, the money *must* be raised. Here is presented the most striking example of the evil of taxing every step in the administration in justice. The unhappy suitors of to-day must pay the profligate pensions granted in former times. If this must be so, let the surplus fund, the accumulation of a century or more, be applied to redeem these annuities, whether limited or perpetual, and so far remove, in many cases, a denial of justice. Thus both the public and the practitioner will be gainers; the latter, by being relieved from the heavy outlay of fees, and the former, from their ultimate payment, where the success of a suit enables them to make it; but often the loss falls with unmitigated severity on the solicitor.

3. The next subject in importance is that of the Law of *Bankruptcy and Insolvency*, which above all others seems doomed to endless change, with little, if any, real improvement. We are informed that the Select Committee of the House of Lords, to which Lord Brougham's Bill for consolidating and amending the law has been referred, will receive evidence at the commencement of the next Session. It will behove practitioners to consider the bill, and offer such evidence on the provisions it contains as may be necessary. We understand that several solicitors in large practice in Bankruptcy, will be called in the early part of the inquiry. This course is obviously the right one. They who have to work out the law, are the most competent to describe its present defects, and point to the simplest and most practical remedies Referring our readers to a long series of articles on this subject, and to the observations in another part of the present number, we shall vigilantly watch the progress of this branch of our jurisprudence, and from time to time discuss all the further alterations which may be proposed.

4. In regard to *actions and suits* in the Superior Courts, there are also a few propositions worthy of a brief notice. These consist of the Declaratory Suits Bill, which was suggested by Lord Brougham, to enable expected litigants to try their rights by anticipation—a measure which seems to partake of the nature of suits to perpetuate testimony, and "Bills of Peace," and for "Quieting Possession." The difficulties of course in all these cases, is to bring before the Court all necessary parties, in order to bind them by the result of the proceedings.

Lord Campbell proposes to prevent the bringing of unnecessary actions, or rather, by the alteration of the law, to enable several persons to join their rights in one suit, instead of resorting to a multiplicity of suits.

Policies of Insurance, which belong to the class of *choses* in action, are to be made assignable, so that the parties entitled to the receipt of the proceeds may institute the requisite proceedings in their own names.

The *Charity Trusts* Regulation Bill will, in all probability, be again brought forward. It will be expedient, we think, on the part of the practitioners in Chancery who may be materially affected by the contemplated change, to consider the proper remedy for the evils complained of, and suggest such alterations as may appear expedient for the purpose of diminishing the delay and expense of Equity Proceedings in Trusts of small amount.

5. The Bill for the Repeal of the *Certificate Duty* has already been notified in the proceedings contemplated in the next Session, and we trust along with it will come a *revision of the Stamp Law*. Whilst all are agreed in condemning the poll-tax on attorneys, as at variance with the first principles of taxation, and unjust and unequal in its application,—differences of opinion exist on the mode of obtaining a remedy. Our opinion is, that in addition to the intended bill for the repeal of the tax, on which the sense of the House may be distinctly taken, the proper exertions should be made for effecting a revision of the Stamp Act, by which not only the profes-

sion may be relieved, and a more just and equitable *ad valorem* scale established, but the larger part of the public will be benefited, and the revenue suffer no reduction.

6. The bill which was introduced by the Attorney-General for establishing *Courts of Petty and Special Sessions*, will, no doubt, be renewed. We noticed, when it was last before parliament, that for the effective conduct of the business of such courts, it would be absolutely requisite to appoint attorneys or solicitors of a certain standing in the profession, who, from their legal education and experience, would be the most competent of all persons to discharge the duties of the office. Notwithstanding the neglect of the public interest which has been so often shown in permitting unfit persons to hold official situations, we cannot suppose that, whilst establishing new courts, the government will fail to provide means for the due discharge of the duties to be performed.

The proposed *abolition of Grand Juries* appears to be more and more likely to be carried into early effect. As regards that class of the public which is occupied in these preliminary inquiries, they will be relieved from the discharge of a duty, generally burdensome, and productive of little advantage. The magistrates, aided by their clerks as their legal advisers, may well be entrusted with the preliminary inquiry before the parties accused are put on their trial. The secret inquisition of the grand jury, unassisted by counsel or attorney, has always been a most unsatisfactory tribunal. Its abolition may enhance the responsibility of justices of the peace, and their clerks; and it must follow, we think, that these professional advisers of the "great unpaid" will, in all cases, be selected from the body of attorneys and solicitors, and not, as too often is the case, from unqualified persons through favour or mistaken kindness.

7. With regard to the *Criminal* Law, very extensive alterations are proposed. We lately noticed that of an Appeal in Criminal Cases (see 36 L. O. 477.) Lord Campbell and Mr. Ewart will no doubt introduce and support their several remedies for the present defects. The latter may, perhaps, again take the sense of the House on the total abolition of the punishment of death; and Lord Nugent (who also holds a similar doctrine) proposes to alter the law regarding imprisonment before trial. Akin to this melioration, Lord Campbell proposes to give power to coroners to admit accused persons to bail. Then,—towering above these individual measures,—there is the large and general one of a consolidation of the entire system of the criminal law, which has been proposed by Lord Brougham—a vast and comprehensive digest from high treason to the lowest misdemeanour!

8. The Law and Practice of *Parliament*, and the election of Members, are destined to undergo renewed discussion. The power of resuming bills in the Session following their introduction, at the point to which they had arrived, is proposed by Lord Stanley, but opposed by the Committee of the Commons on Parliamentary Proceedings (see 36 L. O. 462). The exclusion of insolvent members is proposed in both Houses: in the upper by Lord Brougham, in the lower by Mr. Moffatt. The corrupt practices at elections are to be put down by no less an authority than the present Prime Minister. Mr. Wyld has intimated his intention of applying for an extension of the elective franchise, and the much more comprehensive measure on which Mr. Hume divided the House, may or may not be again propounded.

9. On questions of a general, rather than a legal character, it may be mentioned that an alteration in the Law of *Marriage*, with respect to the prohibited degree of affinity in regard to sisters-in-law, seems likely to be discussed by the Hon. Mr. Wortley. Then the advocates of the *Roman Catholics* and the *Jews* will also propose their measures of relief; and, finally, the great political question of the *Navigation* Laws will be mooted by Lord John Russell.

Here, therefore, is "ample room and verge enough" for the contents of another and another volume. On many of these subjects, so often before our readers, we shall have to "fight the battle o'er again." There is, indeed, no fear that our "occupation will be gone," or that we shall be relieved from our duty of watching our legislators, young or old, in their various attempts to amend the law without the aid of the practical experience and judgment of the several branches of the profession. It will still be our province, (as it has been since the opening speech of Lord Brougham in 1830,) to put our readers in possession of all the projects which affect themselves or their clients;—to consider and discuss the merits or demerits of the measures pro-

posed;—to forewarn them of approaching danger, and avert or mitigate it, so far as may be in our power.

Passing from these *legislative* measures, it will also be our duty to advert to, and often enlarge upon, other topics—*inter alia*, the relative positions of the two branches of the profession; the *encroachments on the province of attorneys* and solicitors, and the increased restrictions to which, of late years, they have been subjected under the Rules of the Inns of Court. This is a subject of great professional importance, on which we have received various hints and suggestions; and we invite further communications, in order that we may, as comprehensively as possible, represent the sentiments of the profession at large.

CONSTRUCTION OF THE BANKRUPT AND INSOLVENT ACTS.

Since the jurisdiction under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, was taken from the commissioners of bankrupts, and transferred to the insolvent commissioners and the County Court judges respectively, by the stat. 10 & 11 Vict. c. 102, some decisions have been reported materially affecting the operation of the acts first referred to. The effect of these decisions we shall endeavour to describe as succinctly as can be done within a limited space.

The Act 5 & 6 Vict. c. 116, as most of our readers are aware, for the first time extended the benefit of the insolvent laws to persons who had not been taken in execution, and had not, therefore, necessarily seen the interior of a debtors' prison. The order of the Court for the protection of the debtor was termed a "final order;" and on the granting of this final order, all the estate, present and future, of the insolvent, vested in the assignees, who took all the present property absolutely, and had a right to obtain all property subsequently acquired by the insolvent. If, after obtaining his final order, the insolvent was sued for any debt mentioned in his schedule, under the 10th section of the Act 5 & 6 Vict., he was at liberty to plead the "final order" in bar to the action, and the plea directed by the act described the legal effect of the order as "an order for protection and distribution." Thus stood the law before the passing of the 7 & 8 Vict. c. 96, which proposed to alter and amend the 5 & 6 Vict. c. 116, by giving greater facilities to insolvent petitioners, dispensing with notice in the Gazette, &c.; but it was expressly enacted, that nothing contained in the 7 & 8 Vict. c. 96, should be construed to repeal, affect or alter the provisions of the 5 & 6 Vict. c. 116, except so far as was specially provided, or except so far as the provisions of the 5 & 6 may be inconsistent or at variance with the provisions of the 7th & 8th.[a] The latter Act, however, prescribed the form of the final order to be granted under its provisions;[b] and expressly specified that it was an order "to protect the person" of the insolvent from being taken or detained under any process in respect of a debt included in his schedule. The question, therefore, soon arose, whether a "final order" made under the 7 & 8 Vict. c. 96, merely operated to protect the person of the insolvent, or whether it was equivalent to a final order granted under the 5 & 6 Vict. c. 116, and might be pleaded absolutely in bar to an action for the debts against which it granted protection. The point came before the Court of Common Pleas, upon demurrer, in a case of *Toomer* v. *Gingell*,[c] frequently referred to in these pages. In that case, the defendant pleaded a final order founded on the stat. 7 & 8 Vict. c. 96, in answer to an action founded on a debt contained in his schedule, and the Court having intimated an opinion that the intention of the legislature under that act was to restrict the protection of the final order to the person of the petitioner, leaving his after-acquired property still subject to his debts, the learned counsel for the defendant, after taking time, abandoned the argument, and judgment was given for the plaintiff. This decision, which took place so far back as in Trinity Term, 1846, was for some time recognised as an authority for the proposition, that a final order granted under the 7 & 8 Vict. c. 96, protected the person of the insolvent merely, and not his property. The question was brought before the Court of Exchequer, however, in Trinity Term last, in two distinct cases, *Platell* v. *Bevill*,[d] and *Jacobs* v. *Hyde*,[d] both of which were argued nearly at the same time. In the first of these cases, in answer to an action of debt, the defendant pleaded a final order granted by a commissioner of the Court of Bankruptcy, under the 7 & 8 Vict. c. 96; and this plea was demurred to upon

[a] 7 & 8 Vict. c. 96, s. 74.
[b] 7 & 8 Vict. c. 96, sched. A., no. 3.
[c] 3 Com. Bench, 322; and 4 Dowl. & L. 182.
[d] Reported 17 Law Jour.; N. S. 249 Exch.

the ground, amongst others, that after the passing of the 7 & 8 Vict. c. 96, the commissioner had no power to make an order which would operate as a bar to the action. In *Jacobs* v. *Hyde*, the defendant pleaded a final order, similar in substance to that pleaded in *Platell* v. *Bevill*, but the defendant, instead of demurring, replied that "a final order for protection and distribution was not made *modo et formâ*," upon which issue was joined, and the cause went down to trial. At the trial the defendant put in evidence a final order, duly made under the 7 & 8 Vict. c. 96, but the Lord Chief Baron, who presided, on the authority of *Toomer* v. *Gingell*, ruled that the order only protected the person of the defendant, and that the plea was not proved. The point was afterwards brought before the Court upon a motion for a new trial on the ground of misdirection. The judgment of the Court in both cases was delivered, after consideration, by Mr. Baron Rolfe, who says:—"We have to construe the provisions of two acts of parliament, which are by no means clearly expressed, especially the latter, the wording of which, particularly of the form given in the schedule for the order of protection, is likely to mislead the reader; but, on a careful consideration of the clauses of both acts, we think the intention of the legislature is sufficiently plain, and that there is no difference in the legal effect of the final order given under the second, from that given under the first act, as to the discharge of the insolvent. In both, we are of opinion that it constitutes an absolute bar to the actions in respect of which it is a protection." After a minute analysis of the provisions of the two acts, 5 & 6 and 7 & 8 Vict., the judgment proceeds thus:—"Considering the two acts together as one system, we see no reason to suppose that the legislature, which clearly meant to give facilities to the debtor to obtain his discharge, intended also to limit the operation of that discharge under the new act, all his property, present and future, being disposed of for the benefit of creditors in the same way in both acts. We think that the legal effect of the discharge is the same in both acts, and that the effect inartificially described in the 10th section belongs just as much to an order under the second as under the first first." After alluding to the different view taken of the question in *Toomer* v. *Gingell*, the learned Baron observes, that the case was not then fully argued, and, in his opinion and that of his learned brothers, the impression which prevailed in that case was a wrong one. Judgment was, therefore, given in *Platell* v. *Bevill* for the defendant, and the case of *Jacobs* v. *Hyde* was decided upon the same grounds and in the same manner.

The result of these recent decisions has been again to set up the protection statutes, which were beginning to fall into disrepute whilst the decision of the Common Pleas in *Toomer* v. *Gingell* was considered a governing authority. At present, it may be said there is only the judgment of one Court against that of another; but it must be admitted the recent cases in the Exchequer were more fully argued, and better considered, than the case of *Toomer* v. *Gingell*; and there is little doubt that the decisions in the Exchequer are in accordance with the *actual*, as distinguishable from the presumed, intentions of the legislature, and will ultimately prevail.

As a species of "set-off" to the cases in the Exchequer, which materially increase the benefits conferred upon insolvents, who avail themselves of the protection statutes, the commissioners of the Insolvent Court have been ruling in a manner materially to limit their operation. In the case of *James Henry Hance*, it was announced, in a very elaborate judgment delivered by Mr. Commissioner Law, on the 7th of August last, that a person who has once obtained a protecting order under these statutes, is not eligible as a candidate for protection again,—or, in other words, that a second petition will not be entertained whilst the first continues on the records of the Court. It was admitted by the learned commissioner that the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, do not contain any express prohibition against a second petition, but the judgment proceeded upon the principle of analogy to the bankrupt laws, under which it is clearly established, that whilst one bankruptcy is subsisting, and whilst the bankrupt is uncertificated, a second bankruptcy cannot be recognised.* A different rule, as most of our readers are aware, prevails under the old Insolvent Act, 1 & 2 Vict. c. 110. There are instances, we believe, where persons have obtained the benefit of that statute against four or

* *Martin* v. *O'Hara*, Cowp. R. 823; *Exparte Brown*, 2 Ves. Jr. 67; *Exparte Martin*, 15 Ves. 114; *Exparte Rhodes*, ib. 539; *Exparte Crew*, 16 Ves. 269; *Exparte Munton*, 1 Ves. & B. 60; *Till* v. *Wilson*, 7 B. & C. 884; *Fowler* v. *Coster*, 10 B. & C. 427; and *Exparte Devas*, 1 Mon. & M'A. 44.

five different sets of creditors. The distinction is founded on the fact, that the petitioner under the 1 & 2 Vict. c. 110, is necessarily and inevitably a prisoner, and however he may have misconducted himself as regards his creditors, the law discountenances perpetual imprisonment for debt, and deals with him according to his deserts. If the decision in the Insolvent Court, however, be correct, and there is no appeal from the decision so far as we know, an insolvent petitioner, not a prisoner, is not entitled to the same merciful consideration; and as a first petition under the protection acts vests. the estate and effects, present and future, in the assignee, a second petition under the same statutes cannot be entertained.

Our attention has been directed to another insolvent case, which was not, however, decided upon the protection statutes, but upon the 1 & 2 Vict. c. 110. By the 35th section of that statute, it is declared lawful for any person in actual custody within the walls of any prison, to petition the Court for the Relief of Insolvent Debtors for his discharge, within fourteen days next after the commencement of the actual custody of such prisoner, or afterwards, if the said Court shall in any case think reasonable to permit the same. In the case of *Henry John Todd*, heard before Mr. Commissioner Reynolds on, the 30th of May last, the Court, in the exercise of the discretionary power given by the last section, declined to permit a petition to be filed by a prisoner who was in custody for nearly twelve months. The facts of this case were, that a fiat in bankruptcy had issued against Todd, who came up for his certificate under this bankruptcy in June, 1846, and the learned commissioner in bankruptcy ordered the grant of the certificate to be suspended for four years. On the 3rd June, 1847, the bankrupt was taken in execution by a judgment creditor, who had not proved his debt under the fiat, and after remaining in prison for nearly twelve months, applied to the Insolvent Court for liberty to file his petition. That Court, however, rejected the application, upon the ground that the bankrupt commissioner must have contemplated that the possible effect of the suspension of the certificate would be to render the bankrupt liable to imprisonment during the period of suspension, and that the interference of the Insolvent Court would be to defeat the judgment of the Court of Bankruptcy, as regarded the liability to imprisonment. It was conceded, that where the commissioner in bankruptcy adjourned a bankrupt's last examination *sine die*, or refused a certificate altogether, if such bankrupt were taken into custody, he might petition the Insolvent Court; but in such cases it was said, the Court acted upon the principle that the Court of Bankruptcy declined to deal with the case, and that the Insolvent Court interfered to prevent imprisonment for life. This case furnishes a striking illustration of the anomalous state of the Law of Bankruptcy and Insolvency. The bankrupt whose certificate is suspended might suffer a long imprisonment,[e] whilst a bankrupt who had so grossly misconducted himself that his certificate was absolutely refused, could avail himself of the benefit of the Insolvent Act, and obtain his immediate discharge. In practice, therefore, the greater the culpability the lighter the punishment. This discreditable state of things attracted attention, and has been partially altered.[e] Much more, however, requires to be done, and it is hoped that the next Session of Parliament will not pass without that long looked for reform—a substantial amendment of the Law of Debtor and Creditor.

CHANGE OF CHANCERY SITTINGS.

At the meeting of the Courts on the first day of Term, the *Lord Chancellor* referred to the petition from certain members of the junior Bar, presented to him at the latter end of last Term, alleging the inconvenience of attending at Westminster during the two Terms (Michaelmas and Hilary) when Parliament was not usually sitting, and suggesting that during those Terms the Courts might be held at Lincoln's Inn. His lordship said, that he had consulted with the Master of the Rolls on the proposition contained in the petition, and it had been determined, by way of experiment, to hold the Courts of Equity at Westminster, during the Sitting of Parliament, and at Lincoln's Inn during its recess. In making this arrangement, the convenience of the junior Bar had not been the only consideration.

[e] By an act of the last Session, (11 & 12 Vict. c. 86, printed *ante*, p. 423,) power is given to the bankrupt commissioners, to order the release of any bankrupt who has been adjourned *sine die*, or his certificate suspended or refused, after he has undergone such imprisonment, not exceeding two years, as the commissioner may consider a sufficient punishment. See *In re Saul*, *ante*, p. 452; *In re Burts*, *ante*, p. 509.

During the Sittings after last Term, several causes had been postponed or ordered to stand over, upon the ground that counsel were at the time engaged in the House of Lords. It was proposed that the new arrangement should commence on Monday next. In reply to a remark from Mr. Malins, his lordship expressed his readiness to receive from the Bar any communication on this subject.

In exchange for the boon for holding the Courts at Lincoln's Inn during Michaelmas and Hilary Terms, it is proposed to continue the Sittings at Westminster from the end of Hilary Term until the resuming of the Courts in July or August for the long Vacation.

This arrangement will doubtless be very convenient to the practitioners in the House of Lords and before Parliamentary Committees; but will unquestionably entail much additional labour on those who already complain of the fatigue and trouble of attending the Courts at Westminster. It is understood that a meeting will be forthwith convened for the purpose of ascertaining the opinion of the Equity Bar on the proposed alteration.

THE QUEEN AND PRINCE ALBERT SUITORS IN CHANCERY.

COPYRIGHT.

A VERY flagrant invasion of the personal rights of the Sovereign and her Consort appears to have been perpetrated by some person having access to the Palace, who has taken copies of the etchings of her Majesty and Prince Albert, and was about to publish them. An injunction has been granted on the following affidavit restraining the publication:—

"Albert, Prince of Saxe Coburg and Gotha, Consort of her Majesty the Queen, maketh oath and saith, that he has looked through the book entitled 'A Descriptive Catalogue of the Royal Victoria and Albert Gallery of Etchings.'

"That there are such etchings made by her Majesty and himself respectively as therein mentioned—that the same were so made for the private use of her Majesty and himself, and not for publication. That they had a private press, from which they occasionally took impressions of the etchings, and that the plates were and are kept locked up by her Majesty, in order to prevent the same becoming public, but that copies are left in some of the private apartments and in such private apartments only.

"That there are various family portraits and etchings from old and rare engravings in the possession of her Majesty, and several from such original designs as in this catalogue mentioned, and that amongst such etchings are several portraits of the Princess Royal, and such scenes in the Royal nursery as in the catalogue mentioned. That such etchings were intended for the private use of her Majesty and the deponent only.

"That although some of such etchings have been given occasionally and very rarely to the personal friends of her Majesty, yet the deponent says, speaking positively for himself and to the best of his belief for her Majesty, that no such collection as that advertised for exhibition was ever given away by them or either of them, or by their or either of their permission.

"That no such collection could have been formed except by impressions surreptitiously and improperly obtained, and believes that the defendant or the person or persons in the possession of the collection advertised for exhibition must have obtained and did obtain the same from some person or persons surreptitiously.

"That by whatever means the same were obtained, the exhibition of the said etchings, or any of them, is without the sanction and against the wishes of her Majesty and deponent, and that such catalogue could not have been compiled or made except by possession of the several impressions of the said etchings so surreptitiously obtained.

"That the deponent's first knowledge of the existence of such Catalogue of Etchings was on the 11th of October instant, when it was given to deponent by Mr. G. E. Anson, as a parcel which had been left at the palace, directed to her Majesty, and opened by him as her privy purse; and deponent thereby learnt, for the first time, that it was intended to submit them to public exhibition, and he believes on the same occasion and at the same time her Majesty first became aware of the existence of such catalogue, and deponent immediately desired the said Mr. G. E. Anson to write to the private solicitor of her Majesty on the subject."

NOTES OF THE WEEK.

PROFESSIONAL APPOINTMENTS AND DISAPPOINTMENTS.

IT is deserving of notice that the legal year which has just concluded has been remarkably barren of events. No one of the judges, either of the Courts of Law or of Equity, has retired during the past year, and the changes by promotion have been less numerous than for many preceding years. Sir John Romilly succeeded Sir David Dundas as Solicitor-General, upon the retirement of the latter after Hilary Term; and Mr. Arnold Wallinger, of the Home Circuit, had the honour of the coif conferred upon him in the Vacation after Trinity Term. These are the only changes we find recorded. There has been no addition to the number of her Majesty's Counsel, although it is notorious that there are several candidates for the honour.

LAW REPORTS.

It is matter of general and well-founded professional complaint, that the regular reports of all the Courts have been suffered to fall considerably into arrear. The first number of a new volume of Messrs. Adolphus and Ellis's Queen's Bench Reports was delivered last week, and contains no later decisions than those pronounced in Trinity Term and Vacation, 1846! This number of the Queen's Bench Reports strikingly illustrates the inconvenience, injury, and unnecessary expense, to which the profession is subjected by the postponed publication of the judgments in cases so long since decided. There are no less than three cases reported upon the sufficiency of examinations in poor removal cases, the practice of sending such examinations having been altogether abrogated by an act of the last Session, (11 & 12 Vict. c. 31).[a] It is but justice to the reporters and publishers of the Queen's Bench Reports, however, to add, that they seem to have been sensible of the dissatisfaction occasioned by the delay which has taken place, and have announced that they obtained the assistance of Messrs. Merivale and Davison in Hilary Vacation and Easter and Trinity Terms, 1847, and that the cases decided during this period will be published concurrently with vol. 9, containing the reports of cases in 1846.

LAW PROMOTIONS.

Mr. David Power, of the Norfolk Circuit, (called to the Bar 1840,) has been appointed Recorder of Ipswich, in the place of Mr. Wm. T. S. Daniel.

[a] The act is printed 36 Leg. Obs. p. 298.

We understand that Mr. Hare has succeeded Mr. Jackson as Secretary to Vice-Chancellor Wigram. We trust this will not interfere with the learned gentleman's Reports.

LECTURES AT GRAY'S INN.

The Lectures on the Law of Real Property, &c., will be resumed in the Hall of this Society, on the evening of Monday, the 6th of November next, when an Introductory Lecture will be delivered on "The Law of England considered as a Science." A Series of Lectures will follow on the subject of "Covenants," which will be delivered as usual on the Monday and Thursday evenings in each week, at half-past seven o'clock, and the Examinations and Mootings will take place every Friday morning, at half-past nine o'clock. We are also informed that a change is contemplated, by which members of the several Inns of Court may be admitted to the Lectures more freely than heretofore.

PROROGATION OF PARLIAMENT.

At a Court at Windsor, on the 31st October, it was ordered by her Majesty in Council, that the Parliament, which stood prorogued to Thursday, the 2nd Nov. next, be further prorogued to Tuesday, the 19th day of Dec. next.

It is *not* added "for the despatch of business;" and we may therefore expect that parliament will not meet till late in January or early in February.

TESTIMONIAL TO CHIEF JUSTICE TINDAL.

We are informed that the subscription for a statue of the late respected Chief Justice Tindal has already reached the sum of 500*l.*

RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Vice-Chancellor Knight Bruce.

Mushet v. *Cliffe*. Saturday, March 25, 1848.

WILL.—CONSTRUCTION.—EXONERATION OF PARTICULAR LAND.

A. B., *as surety for his two sons, mortgaged a particular property to secure* 2,500*l.*, *and received a bond of indemnity from his two sons. He devised that property to one of these two sons, and gave the residue of his estate to trustees, upon trust to convert into money, and to pay his funeral and testamentary expenses, and all his debts, and in particular all sums which might become charged upon or payable out of the property bequeathed to his said son:* Held, *that the* 2,500*l. was payable out of the testator's estate, to the exoneration of the principal debtors.*

By an indenture dated 8th of March, 1846, David Mushet and Robert Mushet mortgaged an estate belonging to them to Messrs. Bailey and Co., their bankers, for securing 540*l.* then due, and interest, and also such further sums as might be advanced to them by the bankers, not exceeding altogether 2,500*l.* As a further security for all such sums and interest, David Mushet, the elder, the father of the above-named David and Robert Mushet, and as surety for them, by an indenture of even date, mortgaged the "Oakwood deep mine level" to the bankers. By a bond of even date with the indentures, D. and R. Mushet became bound to the said D. Mushet, the father, in the penal sum of 5,000*l.*, for the indemnity of the father in respect of the deed executed by him. D. Mushet, the father, by his will, dated the 17th of April, 1847, devised the "Oakwood deep mine level" to R. Mushet, and after certain other devises and bequests, gave all the residue of his real and personal estate and effects to trustees, upon trust to convert the same into money. The will continued as follows:—"Upon trust to pay and satisfy my funeral and testamentary expenses, and all my debts, and in particular all sums which may become charged upon or payable out of the property hereinbefore bequeathed to my said son, Robert Mushet, under an indenture of mortgage, dated the 8th of March, 1846, and in the next place pay, satisfy, and appropriate the pecuniary legacies hereinafter given, and do and shall pay so much of the said several monies as shall remain after an-

swering the purposes aforesaid, in the manner following, that is to say:—four equal ninth parts and shares to the said William Mushet, his executors, administrators, and assigns; two equal ninth parts and shares to the said David Mushet, his executors, administrators; and the remaining three equal ninth parts and shares thereof to the said Robert Mushet, his executors, administrators, and assigns." The testator died in June, 1847. D. and R. Mushet were, at the time of their father's death, indebted to the bankers in the sum of 2,500*l.* on the said security. This suit was instituted by D. Mushet, for the administration of his father's estate.

Mr. *Wigram* and Mr. *Heberden*, for the plaintiff, stated that the only question in the cause arose under the will, namely, whether an intention was sufficiently expressed that the 2,500*l.* should be paid out of the estate, so as to discharge the two sons who were the principal debtors, and the plaintiff contended that there was.

Mr. *Russell* and Mr. *B. L. Chapman*, on the other hand, insisted that no such intention was manifested; but

His Honour said, that his impression was, that probably it would be more in accordance with the testator's intention to decide in favour of the plaintiff than against him; he should, therefore, decide that the 2,500*l.* was a gift by the testator to his two sons.

Vice-Chancellor Wigram.

Moody v. *Hebbard.* June 3 & 12, 1848.

ANNUITY.—MEMORIAL.—CONSIDERATION.

It is not required to state in a memorial of an annuity how the consideration has been applied: it is only necessary to state the amount, and whether paid in money, bills, notes, &c.

The plaintiff, in October, 1827, granted, (in consideration of 800*l.*,) an annuity of 64*l.* to the defendant, which was secured, by the assignment of some leasehold property, to a trustee for the defendants; two prior encumbrancers who were to be paid off, joined in the assignment as releasing parties. The defendant paid the consideration by handing 800*l.*, in notes and sovereigns, to the trustee, who thereout paid off the prior encumbrances, and gave the balance (158*l.*) to the plaintiff. The trustee then required the plaintiff's solicitor to pay the defendant's bill of costs, which was reduced by agreement to 70*l.* Plaintiff thereupon gave defendant 100*l.*, and received from him a check for the balance, which was paid. In the memorial of the annuity, the consideration was stated thus:—"Thirty pounds paid in money, 770*l.* paid in notes of the Governor and Company of the Bank of England, expressed to be payable to bearer on demand, making together 800*l.*"

The annuity fell in arrear, and the defendant's trustee obtained a judgment in ejectment against plaintiff. The prayer of the present bill was, that the indenture granting the annuity might be declared null and void, and that the same might be delivered up to be cancelled, and the plaintiff let into possession of the assigned premises.

The principal question argued at the hearing was, whether the consideration was rightly stated in the memorial.

Wood and *Bell* for the plaintiff, and *Rudall* for the defendant.

The following cases were cited:—*Duke of Bolton* v. *Williams*, 2 Ves. Jun. 138; *Byne* v. *Potter*, 5 Ves. 609; *Watts* v. *Millard*, 5 T. R. 598; *Shore* v. *Webb*, 1 T. R. 732; *Washburn* v. *Birch*, 5 T. R. 472; *Kirkman* v. *Price*, 1 Hy. Bl. 309; *Cane* v. *Lovelace*, 2 B. & Adol. 767; *Exparte Ansell*, 1 B. & P. 62; *Wood* v. *Perrott*, 5 Mod. 63; *Relfe* v. *Ambrose*, 7 T. R. 540; *Crawford* v. *Phillips*, 9 Ves. 214; *Exparte Fallon*, 5 T. R. 283; *Finley* v. *Gardner*, 6 B. & C. 165; *Williamson* v. *Gould*, 8 Mod. 109; 3 Sug. V. & P. 10 Ed. App. 4, pp. 20-24.

June 12th. Sir *James Wigram*, V. C. I must in this case decide against the plaintiff. The act requires a memorial to be registered within a certain time after the grant of the annuity, and that memorial is to contain a statement of certain things, amongst which is the pecuniary consideration for granting the annuity. This memorial is to be enrolled in Chancery, and is to be divided into columns, of which one is to be headed "Consideration, and how paid." If the heading were simply "Consideration," no difficulty would have arisen; but the addition of "how paid" suggests the observation that, in the case of *The Duke of Bolton* v. *Williams*, the Court required a statement in the memorial, not only of what was paid, and whether in money or notes, but also of the fact that the consideration was applied partly in extinguishing a former charge. But for that case, Sir Edward Sugden's observation (V. & P., App. 4, vol. 3, ed. 10, p. 24,) would appear quite satisfactory, viz., that the word "how" in the form is explained by that which is written below, viz.,—"100*l.* paid in money, and 500*l.* in notes of the Bank of England; and therefore, "how" can refer, not to the mode of applying the consideration, but only to the payment of so much money. None of the cases, except that one of *The Duke of Bolton* v. *Williams*, raise the question under the old statute, and the subsequent cases are strongly in favour of a liberal construction of the act. The judgment in *The Duke of Bolton* v. *Williams*, which is a case under the old act, is remarkable in this, that it states that the act of parliament requires that the memorial should show, not only how the money was paid, but to whom. That is not required by the present act. I entirely adopt Sir Edward Sugden's observation on the statute, that the party having stated truly upon the memorial how much of the consideration was paid in notes, and how much in cash, has done all that the act requires; and that he is not bound to go on and state that the money advanced by him was applied to extinguish a prior annuity or

any prior charge. As this is the only objection taken to the validity of the memorial, I must dismiss the bill.

Queen's Bench.

(Before the Four Judges.)

Ringham v. *Clements.* Trinity Term, 1848.

TROVER. — PLEADING. — LEAVE AND LICENSE.

In an action of trover the defendant pleaded not guilty and that the plaintiff was not possessed. At the trial it appeared that the plaintiff was indebted to the defendant, and that the wife of the plaintiff, in his absence, gave the goods to the defendant in discharge of the debt, and the jury were of opinion that she had authority so to do.

Held, *that the defendant was entitled to a verdict on both issues, and that evidence of leave and license was admissible under the plea of not guilty.*

THIS was an action of trover for household goods, to which the defendant pleaded—1st, Not guilty; 2ndly, That the plaintiff was not possessed, &c. The case was tried before Patteson, J., at the Summer Assizes for the county of Suffolk, (1847,) and a verdict found for the defendant on both issues. It appeared from the evidence given at the trial, that the plaintiff was indebted to the defendant, and that the wife of the plaintiff, in his absence, gave the defendant permission to take the goods in question. It was objected that, inasmuch as there was no plea of leave and license on the record, that such evidence was not admissible. Leave was reserved by the learned judge to enter a verdict for the plaintiff for the sum of 10*l.*, if the Court should be of opinion that such evidence was improperly admitted. A rule *nisi* to that effect having been obtained,

Mr. *O'Malley* showed cause. The evidence was properly admitted under the plea of not guilty; the word conversion, as used in pleading, must mean a wrongful act. The plea of not guilty in an action for defamation puts in issue the malicious speaking of the words; and it has been held in a late case that a plea of leave and license to trespass for assault and imprisonment was bad. *Stancliffe* v. *Hardwick*,[a] *Whitmore* v. *Green*,[b] *Wilkinson* v. *Whalley*.[c]

Mr. *Couch*, contrà. This was an actual and not a constructive conversion to which some of the cases refer. According to the new rules of pleading, in an action on the case for wrongfully obstructing or diverting a stream of water, the plea of not guilty puts in issue the obstruction or diversion, and not the wrongfulness of the act. [*Wightman*, J. If the defendant by his plea admits the property to be in the plaintiff, it would be difficult for him to plead specially; the whole question is one of property.] [*Patteson*, J. In *Pickard* v. *Sears*,[d] it was held by this Court that under a plea of not possessed, evidence was admissible to show that leave was given by the owner for the possession of them to be in a third person.] If this evidence is admissible under the plea of not guilty, the effect will be to limit the pleas in trover to not guilty and not possessed, except in cases of release.

Cur. adv. vult.

Lord *Denman*, C. J., now delivered the judgment of the Court. This was an action of trover to which the defendant pleaded not guilty and not possessed. At the trial the defence was treated principally as one of leave and license, and was so argued. The general question has been discussed, whether the word "converted" *ex vi termini* means "wrongfully converted," so that any evidence which shows that what the defendant did was rightful must be admissible under the plea of not guilty, as negativing conversion. Upon consideration, however, we are of opinion, that when the wife, by the authority of the plaintiff, (as must be taken to have been found by the jury,) gave the goods to the defendant, the property in them passed to him, and therefore his taking them, which was the conversion relied on, was a taking of his own goods, and not the goods of the plaintiff; and so the second issue was properly found for the defendant. *Vernon* v. *Shipton*,[e] *Pickard* v. *Sears*.[f] In this case there was a demand and refusal, but as that is not an actual conversion, but only evidence of one, it seems to follow that any evidence explanatory of the demand and refusal must be receivable under the plea of not guilty, because it goes directly to show that there was no conversion at all. In the present case, however, that point does not arise. This being a case, not of mere leave and license, but of transfer of the property previous to the taking by the defendant, the verdict was right, and the rule must be discharged.

Rule discharged.[g]

Court of Exchequer.

Adams v. *Freemantle.* June 6, 1848.

PRACTICE. — REMOVAL OF CAUSE ON BEHALF OF THE CROWN.

The Attorney-General may remove a cause out of the Common Pleas into this Court, upon a suggestion that the revenue of the Crown is affected: no affidavit is necessary.

THIS was an action of trespass arising out of the seizure of a vessel called the "Black Cat."

The *Attorney-General* moved that the cause might be removed out of the Common Pleas into this Court.

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[a] 2 Cr. Mee. & Ros. 1. [b] 13 Mee. & Wels. 104. [c] 5 Man. & Gr. 590.

[d] 6 Adol. & Ellis, 469.

[e] 2 Mee. & Wels. 9. [f] 6 Ad. & Ellis, 469.

[g] The case was argued before Lord *Denman*, C. J., *Patteson*, *Wightman*, and *Erle*, JJ.

Greenwood opposed the motion on three grounds:—1st, there was nothing on the face of the record to show that the profits of the Crown were in issue, and there ought to have been an affidavit showing that the revenue of the Crown was in dispute, if it did not appear upon the face of the pleadings; 2ndly, it was a cause in which the revenue of the Crown could not be in any way affected; and 3rdly, even if the matter was one in which the revenue of the Crown might have been affected, that possibility was now at an end, for the ship and cargo had been all returned to the plaintiff. It was laid down in Man. Exc. Pr. 194, that "when the state of the pleadings sufficiently discloses the question intended to be raised, no affidavit in support of a motion to remove the proceedings seems to be necessary. In other cases an affidavit is required, from which it must appear that the matters in dispute relate to the revenue." [*Pollock*, B. What authority is there for that?] There was no authority cited, but the same principle was invariably borne out by all the books, except in the case of the *Attorney-General* v. *Hallett*, 15 M. & W. 97. In the *Attorney-General* v. *Kingston*, 8 M. & W. 163, when the revenue of the Crown was clearly at stake, an affidavit was used, and much discussion arose upon the question, whether the affidavit was properly intituled; which was perfectly useless if no affidavit was necessary. *Kingsman* v. *Hird*, 1 Paine, 206; *Cawthorne* v. *Campbell*, 1 Anstr. 205; *Beningfield* v. *Stratford*, 8 Price, 584. [*Parke*, B. It is stated by *Eyre*, C. B., that he has examined the minute books for almost the whole of the first 50 years of the last century, and he finds in that period more than a hundred precedents of orders of this kind. The question is, how those precedents are?] A statement made by the party suing would not be admissible upon the mere statement of the Attorney-General, but in such cases there must be an affidavit. [*Pollock*, C. B. It is sufficient if the Attorney-General states that the Crown is interested. *Parke*, B. There is no doubt of that if the cause is in Court, then the statement of the Attorney-General is equivalent to an affidavit. *Pollock*, C. B. That being so, upon what reason is the statement of the Attorney-General not to be received when the cause is in another Court?] He then cited *Bercholt* v. *Candy*, Bunb. 34; *Bishop* v. *Warner*, Hard. 193. The Court had jurisdiction to remove the cause only when there was some matter which directly or indirectly concerned the revenue. [*Platt*, B. Suppose this to determine some general question in which the Crown may be interested in having a decision, is not that enough?] Here they have advisedly given up the proceedings on the part of the Crown, how then could it be said the rights of the Crown were involved in the issue. [*Pollock*, C. B. The Common Law is, that all matters affecting the Queen's revenue are to be tried in this Court, and the Attorney-General informs us this does.]

The *Attorney-General* informed the Court he was prepared with an affidavit, if it was thought necessary, but he was of opinion it was not necessary, and therefore he did not wish to prejudice the Crown in respect of its rights. This was a proceeding under the Customs: the vessel was seized under the stat. 29 G. 3, c. 68, s. 7.

The *Court* suggested that the Attorney-General should cause an examination to be made of the precedents, and thereupon inform the Court.

The *Attorney-General*, (June 7,) informed the Court that he had caused search to be made as far back as the year 1704, and found that an affidavit had been used in all the cases, except that of *Cawthorne* v. *Campbell*. The matter was under discussion in *Rowe* v. *Brenton*, 8 B. & C. 765; 3 M. & R. 214, S. C.

Pollock, C. B. The Court are unanimously of opinion this rule should be drawn up merely upon a suggestion.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Law of Wills.

[Resuming the Analytical Digest for the present volume, wherein the several classes of cases will be arranged under appropriate heads, for the convenience as well of ready reference, as to permit the insertion in each number of an entire section, we commence with the practical and important subject of *Wills*.]

ABATEMENT OF LEGACY.

See *Priority*.

ABSOLUTE INTEREST.

1. A testator bequeathed his residue to his three sons, in trust, to be divided between his three sons and his daughter, and he directed his daughter's share to be kept in the hands of his sons, for her "or" her children's sole use free from the control of her husband. The daughter survived: *Held*, that she took absolutely. *Whitcher* v. *Penley*, 9 Beav. 477.

2. A testator gave 14 Phœnix shares, on trust to pay the produce of 10 to his daughters for life, and afterwards to his son, and afterwards to the son's "children;" and he gave the other four shares to his son for life, and afterwards to his "children," and, in default of "such issue" of his son, he gave all the

shares to his "daughters" and their "issue," share and share alike, such issue not to be entitled to or take more than their deceased parent's share. The son died without issue: *Held*, that the daughters took absolute interests, and that their children took only by way of substitution for their parents, and not by way of limitation or succession. *Hedges* v. *Harpur*, 9 Beav. 479.

AFTER-ACQUIRED ESTATES.

Stat. 1 *Viet. c.* 26.—A testator, by his will, devised all his freehold, copyhold, and leasehold estates, "whereof I am now seised or possessed in any manner:" *Held*, on the construction of the whole will, that those words precluded after-acquired freehold property from passing by the will. *Cole* v. *Scott*, 36 L. O. 507.

ASSETS, ADMISSION OF.

Legacy.—Executors who, by their answer to a bill filed for payment of a legacy and interest, admitted that they had paid another legacy, and accounted with the residuary legatee on the footing that no interest was payable on the legacies: *Held*, not thereby to have admitted assets. *Clarke* v. *Bates*, 36 L. O. 391.

ANNUITY.

A testator gave to each of his five daughters 400*l.* per annum for their lives, and, after their respective deceases, he gave the same to their "children" respectively; and in case any of the daughters died "without issue," the annuity to cease: *Held*, that the children of the daughters took for life only a proportion of the annuity. *Hedges* v. *Harpur*, 9 Beav. 479.

BONA NOTABILIA.

Consistorial Court of London.—On its being shown by affidavit that it was impossible to obtain probate of a will in the Prerogative Court of the Archbishop of Canterbury, a probate or administration granted by the Consistorial Court of the Bishop of London will be sufficient to obtain the payment of money out of Court. *Druce* v. *Dennison*, 35 L. O. 520.

CONDITIONAL GIFT.

Married Woman.—A testator, by his will, gave his daughter, a married woman, an annuity (during his wife's life, but) to cease so long as she lived with her husband: he also gave a share of the interest of personal estate to her during her life if she should continue to live apart from her husband, but if she should at any time cohabit with him, then the same to go to other parties. At the date of the will the daughter was living apart from her husband, but she cohabited with him before and at the death of the testator: *Held*, that she was entitled to the annuity and share of the interest of the personalty, notwithstanding the cohabitation. *Wren* v. *Bradley*, 36 L. O. 12.

GIFT TO SISTERS *or* CHILDREN.

A gift to the testator's three sisters *or* their children, as his mother should, by deed or will, appoint: *Held*, to be a gift, in default of appointment, to the whole class of the daughters *and* the children equally; not on the ground that "or" was to be construed "and," but that it was referable only to the power given to the mother of selection from among the class, and that as the power had not been exercised, and the Court could not assume the exercise of it, the whole class must take equally. *Penny* v. *Turner*, 2 Phill. 493.

Cases cited in the judgment: Burrough v. Philcox, 5 Myl. & Cr. 92; Longmore v. Broom, 7 Ves. 124; Brown v. Higgs, 4 Ves. 708; 5 Ves. 495; 8 Ves. 561; Richardson v. Spragg, 1 P. W. 433; Eccard v. Brooke, 2 Cox, 213.

HEIR-AT-LAW.

1. *Proceeds of real estate.—Proceeds of real estate undisposed of.—Heir-at-Law and next of kin.*—The testatrix devised and bequeathed her real and personal estate in trust, as to the real estate, for sale, as soon after her decease as conveniently could be, and declared that the trustees should stand possessed of the sale as a fund of personal, and not real, estate, for which purpose such proceeds, or any part thereof, should not, in any event, lapse or result for the benefit of her heir-at-law; and, after giving legacies, the testatrix directed her trustees to pay and apply the residue of her estate and effects as she should, by any codicil to that her will, direct and appoint. The testatrix made no codicil: *Held*, that the heir-at-law was entitled to the proceeds of the real estate undisposed of by the will. *Fitch* v. *Weber*, 6 Hare, 145.

Cases cited in the judgment: Jessopp v. Watson, 1 Myl. & K. 649; Amphlett v. Parke, 1 Sim. 275; Collins v. Wakeman, 2 Ves. jun., 683; Cogan v. Stephens, 1 Beav. 482. n.; Williams v. Williams, M. R. 11th Dec. 1835; 5 Law J., N. S., Chanc. 84; Johnson v. Woods, 2 Beav. 409; Flint v. Warren, 14 Sim. 554; Gordon v. Atkinson, 19 July, 1847.

2. *Conversion of real estate.*—A testatrix devised to her executors and their heirs all lawful powers and authorities to manage and conduct her freehold estates in the event of her not otherwise giving and devising the same in any other manner or to any other person or persons, so as that the same and every part thereof might at their discretion be sold and converted into money, and the net money to form part of her personal estate: *Held*, that the proceeds of the real estate, when converted, belonged to the heir-at-law, no devise of the same being contained in the will. *Flint* v. *Warren*, 35 L. O. 608.

See *Scotch Entail.*

HEIR-LOOMS.

The effect of a direct gift of chattels, in terms that in real estate would create an estate of inheritance, will not be controlled by a direction that such chattels shall be held as heir-looms. *Rowland* v. *Morgan*, 36 L. O. 530.

INTEREST ON LEGACY.

Where a testator bequeathed an annuity to

his granddaughter for life, and directed that if she should die during the lifetime of his widow, the annuity should be paid for the maintenance of the children of the granddaughter, and that, from and after the decease of his widow and granddaughter, the value or the amount of the annuity (such a sum as would produce it according to the then legal rate of interest,) should be paid to all and every the child and children of the granddaughter; if more than one, to be equally divided amongst them, when and as they should respectively attain the age of 21 years; and if there should be but one, then the whole to such one child, with a gift over in case of the death of the granddaughter without issue who should attain the age of 21: the children of the granddaughter are not entitled to the annuity or interest of the fund after the death of the widow and their mother, until they attain the age of 21 years. *Festing* v. *Allen*, 5 Hare, 575.

See Vested Legacy, 1.

ISSUE MALE, DEFAULT OF.

£5,000 was given on trust to pay the interest to testator's nephew, *J. E.*, for life, and after his death, to the first son of *J. E.* for life, and after his death, to pay the principal to the child or children of such first son equally, and for default of such issue, to pay the interest to the second, third, and all the other sons of *J. E.* successively as they should be in priority of birth and seniority of age, and to their respective issue in the same manner as to the issue of the first son of *J. E.*, "and for default of issue male" of *J. E.* remainder over: *Held*, that the words "default of issue male" meant a general failure of issue male of *J. E.*, and not a failure of sons, and limitations over void for remoteness. *Burley* v. *Evelyn*, 36 L. O. 471.

JOINT TENANCY.

Stock.—A sum of stock standing in the joint names of a brother and sister, but contributed by them in unequal shares, constitutes, without more, a joint tenancy, and the whole belongs to the survivor. *Harris* v. *Fergusson*, 36 L. O. 471.

LEGACY.

Assignee. — *Costs.* — In a suit by legatees against the executors of a will for payment of their legacies, an assignee of one of the legatees was made a party: *Held*, that the executors having had in their hands sufficient assets to discharge the legacies when they became payable, the costs of the assignee should be paid by the executors. *Pocock* v. *Johnson*, 36 L. O. 449.

See *Assets*; *Interest*; *Trustee Act.*

LIFE ESTATE.

See *Scotch Entail.*

LIFE INTEREST.

A testator gave the interest of stock to a lady (who afterwards married) for her life, and after her death, directed the capital to form part of the residue of his estate. She and her husband assigned the life interest, and the fund having been paid into Court under the statute 10 & 11 Vict. c. 96, the assignee petitioned for payment of the dividends during the life of the wife. The petition was not served on the residuary legatees. The Court would not give the costs of the petition out of the capital. *Ex parte Pearl, in re Mayo's Will and the Trustee Act*, 36 L. O. 428.

MAINTENANCE.

A testator directed the dividends of a sum of stock to be paid to a father for the maintenance of his daughter until she attained 21 or married with consent. She married under 21, and without consent: *Held*, on the construction of the will, that she was entitled to the dividends which accrued between her marriage and her attaining 21. *In re Camac*, 36 L. O. 310.

MALE ISSUE.

See *Issue Male.*

MARRIED WOMAN.

See *Conditional Gift.*

NEXT OF KIN.

The testatrix devised and bequeathed the rents, issues, and profits of her real and personal estate to her sister for life, and upon and after her decease, upon trust to sell the real estate, and pay the money arising therefrom to such persons as the testatrix should, by way of codicil, direct; and, if she should not bequeath the same by any codicil, then to pay the same unto and amongst her next of kin; and, by her codicil, the testatrix revoked the former devise and bequest made by her will, and devised and bequeathed all the said real and personal estate to other trustees, upon the like trusts, but directed that all "the said residue" should be paid to her next of kin on the part of her mother, and not to any of her next of kin on the part of her father: *Held*, that the testatrix died intestate as to the residuary personal estate.

That the next of kin of the testatrix, *exparte maternâ*, at the death of the tenant for life, were, under the codicil, entitled to the proceeds of the real estate. *Say* v. *Creed*, 5 Hare, 560.

Cases cited in the judgment: Holloway v. Holloway, 5 Ves. 399; Jenkins v. Gower, 2 Coll. 537; Guy v. Sharp, 1 Myl. & K. 602; Jones v. Colbeck, 8 Ves. 38; Miller v. Eaton, Sir G. Cooper, 272; Bird v. Wood, 2 S. & Stu. 400.

"OR" CONSTRUED "AND."

See *Gift to Sisters* or *Children.*

PERSONAL REPRESENTATIVES.

A testator gave 1,000*l.* to trustees, upon trust for *A. B.* for life, and after *A. B.*'s death without issue, for the testator's three sons equally; and he declared that if any of the three sons should die in *A. B.*'s lifetime, his or their share or shares should be paid to his or their legal personal representatives. Two of the sons died in *A. B.*'s lifetime: *Held*, that the executors, and not the next of kin, of such

sons were entitled to receive the shares. *Hinchcliffe* v. *Westwood*, 36 L. O. 311.

PLATE, BEQUEST OF.

A gift of all furniture, plate, &c., to wife, for her sole and separate use, but in the event of her decease, the plate to be returned to my surviving heir, and continue in my family: *Held*, that, on the disclaimer of the testator's present heir, the wife was absolutely entitled to the plate. *Keane* v. *Lord Keane*, 35 L. O. 482.

PRIORITY.

Abatement.—A testator bequeathed certain legacies, payable two years after his decease, and gave an annuity for the maintenance of his brother, directing his trustees to make the first payment on the first half-yearly day of payment after his decease, and to set apart sufficient of his estate to pay the annuity, or to invest a sufficient sum in the purchase of a government annuity: *Held*, that the annuity was not charged on the realty, had no priority, and must abate *pari passu* with the other legacies. *Ashburnham* v. *Ashburnham*, 36 L. O. 188.

RAILWAY SHARES.

Anticipated calls.—Bequest of "all my share and interest" in the shares of a railway company held to pass the right to sums paid by the testator in anticipation of calls not made at his death, and to the interest payable in respect of those sums. *Tanner* v. *Tanner*, 36 L. O. 11.

REAL ESTATE.

See *Heir-at-Law*.

REMOTENESS.

In a devise of real estate upon trust for the daughter of the testator for her life, and from and after her decease, to convey such estate unto and equally between and among all and every the child and children of the daughter, who should live to attain the age of 23 years, and to his, her, and their heirs and assigns for ever; and in case there should be no such child or children, or, being such, all of them should die under 23 without issue, then over, with power to apply for maintenance; the interest of such child's share, notwithstanding such child's share should not be then absolutely vested,—the limitation to the children of the daughter, and the limitations over on default of such children, are void for remoteness. *Bull* v. *Pritchard*, 5 Hare, 567.

Cases cited in the judgment: Phipps v. Ackers, 9 C. & F. 583; 4 M. & G. 1107; 3 C. & F. 703; 5 Sim, 44; Festing v. Allen, 12 M. & W. 279; 5 Hare, 573; Doe v. Moore, 14 East, 601.

RESIDUE.

A testator gave to the sons and daughters of *T.*, viz., *M. T.*, *J. E.*, *F. T.*, *W. T.*, *J. J.*, and *E. M.*, 100*l.* each, *F. T.* excepted, "as the interest of such share shall be paid to *M. T.* for life, then the said 100*l.* to be given to *F. T.*'s children;" and he gave the residue to *A. F.* for life, and after her decease he gave all his remaining effects whatsoever to the sons and daughters of *W. T.*, (except and excepted as aforesaid): *Held*, that the children of *F. T.* took no part of the residue. *West* v. *Laking*, 35 L. O. 503.

SCOTCH ENTAIL.

Heir.—Life estate.—A testator bequeathed the residue of his personal estate to three persons, their executors, administrators, and assigns, in trust, that they or the survivor of them, or the executors, administrators or assigns of such survivor, should invest it in the purchase of estates in England and Scotland, such estates, if in England, to be settled according to the limitations of the same will as to his own English estates, which were thereby limited to one for life, with remainder to his first and other sons in tail, and, if in Scotland, according to the limitations of a Scotch deed of strict entail, to which his own Scotch estates were then subject; and until such purchase could be found, should pay the income of the residuary fund to the person who would be entitled to the rents of the English estates so to be purchased in case the same were actually purchased. And the will contained a power to such person, or, in case of his minority, to his guardian, to appoint new trustees, who were to have all the powers and capacities of those in whose room they should be substituted. The three trustees invested the greater part of the residue in Scotch estates, and all died during the lifetime of the tenant for life. On his death, his son, who was entitled under the Scotch deed to the Scotch estates, as well as under the will to the English estates, conceiving himself absolutely entitled to what remained of the residuary fund, executed disentailing deeds, both of the money and of the English estates, and obtained payment of the fund to himself; but his right to do so being disputed on his death by the next Scotch heir of entail: *Held*, that he had no such right, but that he was entitled to the income only of the fund during his life, and that upon his death, there being then no one by whom new trustees could be appointed under the power in the will, and the Court being of opinion that the discretionary power of selecting between English and Scotch investment would not extend to trustees appointed by the Court, the fund became divisible in equal moieties, one-half belonging to the personal representatives of the deceased, and the other half to be invested in Scotch estates, to the uses of the Scotch deed. *Fordyce* v. *Bridges*, 2 Phill. 497.

Cases cited in the judgment: Attorney-General v. Doyley, 4 Vin. Abr. 485; Cole v. Wade, 16 Ves. 44, 47; Walker v. Walker, 5 Madd. 424; Penny v. Turner, 2 Phill. 493; Maddison v. Andrew, 1 Ves. 57.

STOCK.

See *Joint Tenancy; Unclaimed Stock*.

TRUSTEE ACT.

Reference to the Master.—Legatee.—A legacy distributable amongst six legatees had been paid into Court by the trustees of a will, desirous of being discharged from the trusts, under the 10 & 11 Vict. c. 96, and proceedings

were being prosecuted by some of the legatees for the payment of their shares of the legacy. Notwithstanding such proceedings, an order made, allowing two other of the legatees to proceed separately to obtain their shares, they paying all the expense attendant thereon, and the order also being without prejudice to the rights of the legatees to institute any suit in respect of any interest they might have under the will. *In re Sharpe*, 36 L. O. 209.

"TRUSTING."

A bequest was made of a sum of stock to *A. B.*, trusting that he would preserve the same so that after his decease it might go to his four children, or such of them as should survive him, and was held to create a trust in him for the benefit of his children after his decease. *Baker* v. *Mosley*, 36 L. O. 530.

UNCLAIMED STOCK.

Commissioners for the reduction of the National Debt.—Where stock has been transferred to the Commissioners for the reduction of the National Debt, the proper mode of proceeding to obtain a re-transfer is, first, by memorial to the Bank, and, on refusal, then by petition to this Court under the provisions of the 56 Geo. 3, c. 60. *Hunt* v. *Peacock*, 35 L. O. 483.

VESTED LEGACY.

1. *Interest.*—A testatrix gave 800*l.*, "to be applied by her trustees on the education of *F. N.*, it being her desire that the trustees, or the survivor, or the executors or administrators of the survivor, should follow all the reasonable suggestions of *E. N.*, as to the school and mode of learning in which *F. N.* should be educated." *Held*, that the 800*l.* was a vested legacy in *F. N.*, and subject to the ordinary rules of legacies carrying interest in favour of the legatee from one year after the death of the testatrix. *Noel* v. *Jones*, 36 L. O. 390.

2. Legacy to Anne, the wife of Peter, for life, remainder to Peter, the husband, for his life, and after the death of the husband and wife, upon trust to pay the interest for the maintenance of such children of Anne as should be living at her death, until they should respectively attain 21, and when and as they should severally and respectively attain their said ages of 21 years, upon trust to pay and transfer the legacy equally unto and amongst all the children of Anne, when and as they should severally and respectively attain their said ages of 21 years; and, if any of the said children should die under 21, then unto such as should attain that age, share and share alike; and in case all and every of the said children should die under age, then to pay the legacy to the testator's next of kin. The children of Anne, who attained 21 years of age, acquired vested interests in the legacy, notwithstanding such children died in the lifetime of Anne, the tenant for life. *Bradley* v. *Barlow*, 5 Hare, 589.

BUSINESS OF THE COURTS.

CHANCERY CAUSE LISTS.

Lord Chancellor.

Michaelmas Term, 1848.

APPEALS.

S. O.	Hodgkinson	Hodgkinson	appeal
	Ditto	Jackson	
Af. T.	Allfrey	Allfrey,	ditto
	Sowerby	Gutteridge	ditto
	Moore	Gregg	ditto
	Attorney-Gen.	Wilson	ditto
	Ditto	Ditto	
	Salkeld	Johnson	ditto
	Stewart	Forbes	ditto
	Lewis	Smith	ditto
	Ditto	Ditto	ditto
	Ditto	Ditto	ditto
	Martin	Welstead, 4 causes	ditto
	Davis	Chanter, 9 causes	ditto
	Earl of Balcarras	Johnson	ditto
	Chambers	Artis	ditto
	Cochrane	Cochrane	ditto
	Lord	Colvin	
	Major	Major 5 causes	ditto
	Walker	The East. Counties Rail. Co.	ditto
	Stiles	Guy, 6 causes,	ditto
	Thomas	Thomas	ditto
	Rowland	Morgan	ditto
	The Mayor, &c., Rochester	Lee	ditto
	Mosley	Baker	ditto
	Thomas	Lewis	ditto
	Mangles	Dixon	ditto
	Lord	Copper Miners' Co.	ditto
	Ditto	Ditto	ditto
	Attorney-General	Wilson	ditto
	Cole	Coles	ditto
	Pimm	Insall	ditto
	Sadler	Ditto	
	Attorney-General	Lucas	ditto
	Woods	Woods	ditto
	Beech	Ford	ditto

Master of the Rolls.

Michaelmas Term, 1848.

JUDGMENTS (*reserved.*)

Smith *v.* Earl of Effingham, as to costs.

Rice *v.* Gordon,
Same *v.* Scarnett,
Same *v.* Gordon,
Carter *v.* Gordon,
Same *v.* Ayers,
} cause.

Peacock *v.* Penson,
Same *v.* Same,
} cause.

Knight *v.* Majoribanks.

PLEAS AND DEMURRERS.

Stand over, Dean of Ely *v.* Gayford, six pleas.
Lord Leigh *v.* Lord Ashburton, dem.

CAUSES.

Part heard. { Churchman *v.* Capon, fur. dirs. and costs. / Same *v.* Same, suppl.

To present petition, Stourton *v.* Jerningham.
S. O., Hooper *v.* Denoon.
S. O. to amend, Williamson *v.* Gordon.

Short, { Murray *v.* Scarborough / Same *v.* Crafton } fur. dirs. and costs.

Part heard, *S. O. till petn. of rehearing disposed of* { Hemming *v.* Archer / Same *v.* Same, / Same *v.* Same, / Same *v.* Same, / Raworth *v.* Same, } fur. dirs. and costs.

Part heard. { Hooper *v.* Salman. / Tugwell *v.* Hooper.

Hilary Term, 1849, M'Michael *v.* Kipling, exons. and petition.
Philipe *v.* Watkins, pro confesso.

Part heard { Hemming *v.* Archer / Same *v.* Same / Same *v.* Same / Same *v.* Same / Raworth *v.* Archer } Re-hearing.

Part heard, Gallafent *v.* Brown.

{ Gas Light and Coke Com. *v.* Symonds / Symonds *v.* Gas Light and Coke Com. / Stillman *v.* Gas Light and Coke Com. } exons. & fur. dirs. and costs.

Christy *v.* Courtenay, suppl.

S. O. to amend. { Baynton *v.* Hooper. / Same *v.* Same. }

Knights *v.* Stanton, exons.
Wilson *v.* Eden, fur. dirs. and costs.

{ Benbow *v.* Davies. / Same *v.* Evison. }

Bennett *v.* Cooper, fur. dirs. and costs.
Biggs *v.* Naylor.
Gibbins *v.* North Eastern Metropolitan Asylum, fur. dirs. and costs.

{ Fox *v.* Roberts. / Same *v.* Same. }

{ Greedy *v.* Lavender, / Same *v.* Owen, / Same *v.* Parrott, } fur. dirs. and costs.

{ Robinson *v.* Robinson, / Same *v.* Same, } ditto. suppl.

{ Carr *v.* Henderson, / Same *v.* Thomas, } fur. dirs. and costs and petition.

Oliver *v.* Dunk.
Page *v.* Markland, re-hearing.
Attorney-Gen. *v.* Brook, re-hearing.
Lomax *v.* Lomax. fur. dirs. and costs.
Kirkmam *v.* Booth ditto.
Norfolk Railway Company *v.* Wodehouse.
Adnam *v.* Cole, fur. dirs. and costs.

{ Smith *v.* Oliver, / Same *v.* Same, } exons. and fur. dirs. and costs.

Thompson *v.* Clive, fur. dirs. and costs.
Sanderson *v.* The Cockermouth and Wokington Railway Company.

{ Dibbs *v.* Goren, / Same *v.* Dibbs, } fur. dirs. and costs.

Johnson *v.* Thom[illegible]
Rouse *v.* Rouse, ditto.

{ Wood *v.* Wood, / Same *v.* Same, } exceptions, fur. dirs. & costs.

{ Brandling *v.* Humble, / Same *v.* Same, / Same *v.* Same, } fur. dirs. and costs.

Fyson *v.* Whitmore.
Bradstock *v.* Lediard, suppl.
Newman *v.* Harrison, fur. dirs. and costs.

{ Moody *v.* Payne, / Same *v.* Clarke, } ditto.

{ James *v.* James, / Same *v.* Same, / Same *v.* Lloyd, } ditto.

Salmon *v.* Green, ditto.
Reid *v.* Phillips.
Valland *v.* Amiot, exons.
Dobson *v.* Methven.
Hargrave *v.* Hargrave, fur. dirs. & costs.

{ Boulter *v.* Boulter, / Same *v.* Same, / Same *v.* Same, } ditto.

Bayley *v.* Shearwood, ditto.
Filley *v.* Filley, ditto.
Christy *v.* Courtenay, ditto.
Woolard *v.* Hill, ditto.

{ Lockhart *v.* Alder, / Same *v.* Crouch, } exons. of plaintiff and fur. dirs. and costs.

{ Havergal *v.* Harrison, / Same *v.* Same, } fur. dirs. and costs.

Short, Attorney-General *v.* Gains, ditto.

NEW CAUSES.

Johnson *v.* Nicholls.
Padwick *v.* Platt.
Grimsdale *v.* Grimsdale.
Rudge *v.* Winnall, fur. dirs. & costs.
Attorney-General *v.* Fuller.

{ Jones *v.* Powell, / Same *v.* Same, / Same *v.* Wilson, } fur. dirs. and costs.

{ Walker *v.* Milne, / Same *v.* Same, } exons.

Whiffin *v.* Hartwright.

{ M'Calmont *v.* Rankin. / Same *v.* Turner. / Same *v.* Bird. }

Townshend *v.* Martin, fur. dirs. and costs.
Smith *v.* Smith.
Smith *v.* Downton.

{ Malins *v.* Greenway, / Craddock v. Same, / Malins *v.* Same, } fur. dirs. and costs.

{ Lacklison *v.* Blane, / Same *v.* Hodgson, } ditto

{ Kirkby *v.* Platel, / Same *v.* Whithorne, } exons.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

Bonser *v.* Howcutt, dem.
Rawstone *v.* The East Lancashire Railway Company, dem.
Ream *v.* Smith, dem.
Hopkins *v.* The Great Northern Railway Company, dem.

Granville v. Betts, dem.
Daintre v. Haynes, dem.
Dobson v. Lyall, fur. dirs. and costs.
Johnson v. Tucker, pt. hd.
Jowett v. Board, fur. dirs. and 2 petns.
Skarf v. Soulby.
Wood v. Smith, fur. dirs. and petn.
Askew v. Davidson, fur. dirs. and costs.
Gray v. Webb.
Robinson v. Sollory,
Law v. Urlwins, exons.
Knight v. Morrall.
Harrison v. Ditto.
Knight v. Nugent.
Walker v. Stephens, 2 causes.
Bryan v. Twigg, exons., fur. dirs. and 4 petns.
Wilkinson v. Hartley.
Ashburner v. Wilson, fur. dirs. and costs.
Johnson v. Bates.
Alcock v. Field.
Saunders v. Scott.
Robert v. Roberts.
Roberts v. Lewis.
6th Nov., Attorney-General v. Earl of Stamford, fur. dirs. and petn.
Brown v. Smart.
Grisewood v. Justice.
Horrod v. Taylor.
Smith v. Meyrick, 3 causes.
Harris v. Colling, fur. dirs. and costs.
Colpas v. Westbrook, ditto.
Rimell v. Simpson.
Wilde v. Spencer.
Foster v. Foster.
Boycatt v. Morse, 2 causes.
Balcarras v. Johnson, fur. dirs. and costs.
Roberts v. Roberts.
Seeacham v. Pook.
Appleby v. Briggs.
Dobinson v. Hawkes.
Cowper v. Taylor.
Cunningham v. Antrobus.
Jones v. Lord Langdale.
French v. French.
Hawkins v. Hamerton, fur. dirs. and costs.
Bartlett v. Bartlett, ditto.
Marshall v. Carter.
Milbourne v. Allsup.
Booker v. Clarke, fur. dirs. and costs.
Rawlins v. M'Mahon.
Brooks v. Blandy, fur. dirs. and costs.
Edge v. Duke. 2 causes.
Ridgway v. Gray, exons.
Jones v. Jennings.
Cox v. Archer Burton.
Thorneycroft v. Crockett, exons.
Carter v. Taggart, 8 causes, exons.
Attorney-General v. Willshere, fur. dirs. and costs.
Evans v. Wetherell.
Bodington v. Great Western Railway Company.
Bell v. Bell.
Carter v. Taggart, 8 causes, exons.
Gregory v. Wilson.
Plomer v. Mallard, fur. dirs. and costs.
Willis v. Jones, ditto.
Hill v. Hill.
Langston v. Cozens, fur. dirs. and costs.
Myers v. Perigal, ditto
Short, Straker v. Dryden.
Galloway v. Fuller, fur. dirs. and costs.
Coleman v. Mellersh.
Robinson v. Williams.
Thornton v. Knight.
Varty v. Duncan.
Dykes v. Taylor, exons.
Short, Underhill v. Simkin, fur. dirs.
Drever v. Maudsley, 7 causes, ditto.
Bryant v. Barton, ditto.
Carter v. Taggart, 8 causes, ditto.
Hill v. Armitage.
Simkins v. Webb.
Pratt v. Cooper.
Smith v. Pincombe, 2 causes.
Glover otherwise Gordon v. Hall.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Jackson v. The North Wales Railway Company, dem.
Howard v. Flower, plea.
Edwards v. Shrewsbury and Birmingham Railway Co. 3 dems.
Egremont v. Lee.
Ditto v. Egremont.
Lee v. Egremont.
Ditto v. Ditto.
Attorney-General v. Mosley.
Attorney-General v. Johnson.
Thompson v. Bennett.
Weighman v. Powell
Hood v. King.
Hanbury v. Fletcher.
Gaston v. Frankham.
Wales v. Bourne.
Stafforth v. Pott.
Pidsley v. Serena,
Morgan v. George.
Hider v. Morgan.
Kent v. Underhill.
Capper v. Ditto.
Aitkin v. Bollard.
Blackman v. Searle.
Gilbert v. Stockley.
Roberts v. Roberts.
Townsend v. White.
Drew v. Mostyn.
Turner v. Maule, exons. and fur. dirs.
Ditto v. Turner, suppl. bill.
S. O. Earl of Mansfield v. Ogle.
Ditto v. Earl of Mornington.
Steele v. Maunder
Stroud v. Ditto
} fur. dirs. and costs.
Arundell v. Arundell.
Sardeson v. Minta.
Turner v. Preedy.
Swanger v. Gardner.
Grayson v. Deakin, fur. dirs. and costs.
Attorney-General v. Harvey, ditto.
Culver v. Haynes, ditto.
Fowler v. Reynul.
Davis v. Kingsford.
Mitchelson v Jordan.
Clark v. Markwell.
Higgin v. Slater, fur. dirs. and costs.
Stephens v. Richards.
Griggs v. Staplee.
Stooke v. Vincent, exons.
Ditto v. Ditto, ditto.
Morton v. Cooper.
Stanley v. Bulkeley.
Coward v. Coward, exons.
Woods v. Woods.
6th Nov. Scott v. Saunders, pro confesso.

Oxley *v.* Everet.
Pothecary *v.* Pothecary.
Spackman *v.* Homfray.

Vice-Chancellor Wigram.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

S. O., Waller *v.* Urqubart, fur. dirs. and costs.
S. O. { Gowing *v.* Burge. / Ditto *v.* Sullivan.
Heyne *v.* Tyler.
S. O., Bracey *v.* Earl of Scarborough.
S. O. G., Hepworth *v.* Heslop, exons. and fur. dirs. and costs.
S. O. G., Lawrence *v.* Kent.
Clay *v.* Rufford.
Holland *v.* Teed, exons.
{ Nixon *v.* Taff Vale Railway, / Ditto *v.* Acraman, } exons.
Loader *v.* Clarke.
Gaunt otherwise Jacobs *v.* Johnson.
Swinnerton *v.* Heming.
Chandler *v.* Corke.
Johnson *v.* Leggatt.
{ Thornton *v.* Portsmouth and Arundel Navigation Company. / Ditto *v.* Hope.
{ Ingledew *v.* Yockney, exons. / Ditto *v.* Freake, fur. dirs. and costs.
Cormick *v.* Pearce, ditto.
Lea *v.* Collard.
Neafield *v.* White.
Pennington *v.* Buckley, fur. dirs. and costs.
Hales *v.* Hales.
Steed *v.* Oliver, exons.
Brett *v.* Smith, re-hg.
Mark *v.* Wilson.
House *v.* Way, fur. dirs. and costs.
Percival *v.* Oldershaw.
Norman *v.* Norman, fur. dirs. and costs.
Logan *v.* Gilchrist, ditto.
Greenway *v.* Gavagh, ditto.
Watson *v.* Masters, exons.
Digby *v.* Boycatt, 2 causes.
Gaymer *v.* Hales, fur. dirs. and costs.
Hughes *v.* Hughes.
Short, Phillips *v.* Sloane.

COMMON LAW CAUSE LISTS.

Queen's Bench.

NEW TRIALS.

Remaining undetermined at the end of the Sittings after Trinity Term, 1848.

Easter Term, 1846.

York.—Worth & another *v.* Gresham—Dundas. (Stands till judgment given in a similar case in Court of Error.)

Michaelmas Term, 1847.

Flint.—Edwards and Wife *v.* Williams—Attorney-General.

Hilary Term, 1848.

Middlesex.—The Queen *v.* Cutler—Attorney-General.
London.—Watson *v.* Earl Charlemont and others.—Chambers.
London.—Trimen *v.* De Burgh—Same.
London.—The Queen *v.* Charritie and another—Cockburn for defendant Young, Crowder for defendant Charritie.

Easter Term, 1848.

Middlesex.—Lock *v.* Ashdon—Whitehurst.
Middlesex.—Parry *v.* Berry and others—Crowder.
Middlesex.—Doe d. Campbell and another *v.* Hamilton—Petersdorff.
London.—Lowe *v.* Penn—Sir F. Thesiger.
London.—Tucker, Sec., &c. *v.* Roberts and others—Martin.
London.—Charrington and others *v.* Crofts—Cockburn.
London.—Alcock *v.* Royal Exchange Assurance Co.—W. H. Watson.
London.—Bury *v.* Blogg, admix.—Butt.
London.—Freeman *v.* Miles—W. H. Watson.
Essex.—Ward *v.* Keys—Serjeant Shee.
Essex.—Benyon Clk. *v.* Cresswell—Same.
Kent.—Doe d. Warren and another *v.* Brydges (Brydges Ten.)—Sir F. Thesiger.
Sussex.—Forth *v.* Simpson—Serjeant Shee.
Surrey.—The Surrey Iron Company *v.* Chaplin—Same.
Surrey.—Crofts *v.* Charrington and others—Same.
Surrey.—Daw *v.* Scott and another—Lush.
Surrey.—Webb and another, executors *v.* Spicer—Serjeant Channell.
Surrey.—Same *v.* Salmon—Same.
Wilts.—The Queen *v.* Inhabitants of Cricklade—Crowder.
Devon.—Steer *v.* Bowerman, extrix.—Same.
Cornwall.—Doe d. Vingoe and another *v.* Nicholls—Same.
Cornwall.—Doe d. Thomas and another *v.* Pascoe—Same.
Denbigh.—Doe d. Clay and others *v.* Jones and others—Townsend.
Northampton.—Doe d. Langley and another *v.* King—Flood.
Leicester.—Baily and another *v.* Macaulay—Whitehurst.
Warwick.—Same *v.* Pearson—Same.
Warwick.—Lord Somerville and others *v.* Dawson—Same.
Norfolk.—Briggs *v.* Merchant Traders' Loan Insurance Ship Association—Prendergast.
York.—Shaw *v.* York and North Midland Railway Company—Knowles.
York.—Dixon *v.* Burton—Same.
Liverpool.—Marriott *v.* Cotton—W. H. Watson.
Liverpool.—Bain *v.* Kirk—Cowling.
Liverpool.—Hassall and another *v.* Cole—Knowles.
Cardigan.—Jones *v.* Hall, Esq.—Serjeant H. G. Jones.
Chester.—Vaughan *v.* Matthews—Chilton.

Tried during Easter Term, 1848.

Middlesex.—Beals *v.* Cleobury—Chambers.
Middlesex.—Brown *v.* M'Lean—Serjeant Shee.

Trinity Term, 1848.

Middlesex.—Sewell and another *v.* Marshall—Humfrey.
Middlesex.—Turrill *v.* Crawley—Whateley.
Middlesex.—Doe d. Gordon *v.* Story—Bliss.

Tried during Trinity Term, 1848.

Middlesex.—Silk *v.* Stones—Prentice.

SPECIAL CASES AND DEMURRERS.

Michaelmas Term, 1848.

Whitmore and Co.—Morris, Bt., *v.* Dk. of Beaufort, dem.

(Stands over.)

Gough.—Bowers *v.* Nixon, dem.
Bolton.—Ostler *v.* Cooke and others, special case.
Kinsey.—Doe d. Pennington *v.* Taniere, award.
Gregory and Co.—Trinity House *v.* Beadle, pecial case.
Tilson and Co.—Green and others *v.* St. Catherine Dock Company, special case.
Purrier and W.—Moens and others *v.* Von Griesham, award.
Madox and W.—Bourne *v.* Scott, special case.
Bridges and Co.—Russell, extrix., *v.* Phillips, Bt., special case.
Fearon and Co.—Burton *v.* White, special case.
Lofty and Co.—Woodbridge Union, Suffolk, *v.* Guardians of Cohiers and Careford, Suffolk, special case.
Parnell and T.—King, Clerk, *v.* Alston, Clk., special case.
Johnson.—Everest and others *v.* Humphery, dem.
Hall.—Metcalfe, Bt. *v.* Booth, Bt., dem.
Roy and Co.—Harvey, P. O. *v.* Sanderson, dem.
Fesenmeyer.—Legge, jun. *v.* Harlock, dem.
Buchanan.—Jackson *v.* Hunt, dem.
Tatham and Co.—M'Swiney *v.* Royal Exchange Assurance Company, special case.
Van Sandau.—Eaton *v.* Henderson, special case.
Field.—Wandsworth and Clapham Union *v.* Martin, dem. to defendant's pleas.
Same.—Same *v.* Same, dem. to plaintiff's replication.
Cobbett.—Cobbett, a pauper *v.* Hudson, dem.
Smedley & Co.—Ryan *v.* Clark and another, dem.
Lane.—Nolan *v.* Elster and another, dem.
Tilson and Co.—West Cornwall Railway Company *v.* Mowatt, dem.
Wing and D.—Dublin and Belfast Junction Railway Company *v.* Powell, dem.
Church.—Smith *v.* Fox and another, dem.
Gregory & Co.—Royle *v.* Dixon, dem.
Wiglesworth and Co.—Ayrton and another *v.* Abbott, clk., and another, special case.
Charnock.—Marsden and others *v.* Meeham, dem.
Dickson and O.—Wrightson *v.* Pearce, dem.
Wade and P.—Doe d. Payne *v.* Plyer, special case.
Leigh.—Weedon *v.* Woodbridge, dem.
Maples & Co.—Elliot and others *v.* Von Glehn, dem.
Webster.—Scarpellini *v.* Searancke and wife, dem.
Mounsey & G.—Doe dem. Dand *v.* Thompson, special case.
Leigh.—Weedon *v.* Woodbridge, dem.
Lyddon.—Wilson, Bt. *v.* South Eastern Railway Company, dem.
Wetherfield.—Wetherfield *v.* Wingfield, dem.
Newton.—Newton *v.* Bishop, dem.
Warter.—Sherlock *v.* Spiers, special case.
Dupasquier.—Humby *v.* Taft, dem.

ENLARGED RULES.

For Michaelmas Term, 1848.

First Day.

Exparte William Williams, In re Vaughan, gent., one, &c., and in 5 causes, to be heard in Bail Court.
Staunton and another *v.* Stothert and others, to be heard in Bail Court.
Aldridge *v.* Hippisley, to be heard in Bail Court.
Gay *v.* Hall, to be heard in Bail Court.
Burrell *v.* Haines, to be heard in Bail Court.
Exchequer.—Butler *v.* Masters.
Queen's Bench.—Masters *v.* Butler, and in re Butler and others.
In re plaint in County Court, David Jones, plaintiff, and Ellis Owen, defendant, to be heard in Bail Court.
Bland *v.* Lord Alvanley.
The Queen *v.* The Justices of Ely.
Same *v.* Same.
Same *v.* The Council of Congleton.
The Queen *v.* Inhabitants of Barnwood, to be heard in Bail Court.
The Queen *v.* The Inhabitants of Upton and St. Leonards, to be heard in Bail Court.
The Queen *v.* The Coroner for Kent.
Henry Broom, plaintiff in error *v.* The Queen, to be heard in Bail Court.

Second Day.

In the matter of a plaint in the County Court between Fearon and another plaintiff, and Norvall, defendant, to be heard in Bail Court.
Doe d. Richmond and others *v.* Smith and another.
Daniel *v.* Challis and another, to be heard in Bail Court.
Caulfield *v.* Strange, to be heard in Bail Court.
The Queen *v.* Sir H. P. Seal, Bt., and others, Justices, to be heard in Bail Court.
Same *v.* Joseph Booth.

Third Day.

The Queen *v.* The Inhabitants of Angmering, to be heard in Bail Court.
Same *v.* The Inhabitants of Moreton, to be heard in Bail Court.
Same *v.* Justices of Hants, to be heard in Bail Court.

Common Pleas.

DEMURRER PAPER.

For Michaelmas Term, 1848.

Thursday . Nov. 2
Friday 3
Saturday . . . 4
Monday . . . 6
Tuesday . . . 7
} Motions in Arrest of Judgment.

Wednesday . . 8 Special Arguments.

Engstrom and others *v.* Brightman and others.
Morrison *v.* Chadwick.
Frazer *v.* Hemsworth.
Sanderson *v.* Dobson.
Astley *v.* Fisher.
Reynolds *v.* Read.
Holland, W. *v.* King and another.
Lomax *v.* Landells.
Dean and Chapter of Ely *v.* Cash.
Nash *v.* Brown.
Kearns *v.* Durell.
Boden *v.* Smith and others.
Woolf *v.* City Steam Boat Company.
Monypenny *v.* Dering.
Vincent *v.* Bishop of Sodor and Man and others.
Pilgrim *v.* Southampton and Dorchester Railway Company.
Reed *v.* Shrubsole.
Jones *v.* Aabpitel.
Ward and others *v.* Dalton.
Munroe and others *v.* Bordier.
Gooch *v.* Shordiche.
Batty *v.* St. Aubyn, Clk.
Besset *v.* De Witte.
Graham and others, assignees, &c. *v.* Cox and another.

Wetherell v. Julius and another.
Field v. Walker.
Empson and another v. Knowles.
Sands and others v. Clarke.
Wilson and others v. Bevan.
Birch v. Rees.
Sinaner, admix. v. Great Western Railway Co., loss of life.
Same v. Same, loss of goods.
Wilson v. Bevan.
Burgess v. Skeggs, administrator.
Hill v. Kempshall.
Wood v. Governors and Company of Copper Miners in England.
Smith v. London, Brighton, and South Coast Railway Company.
Richards and another v. Egan.
Tate v. Hitchings, sued with others.
Robinson and ux. v. Marquis of Bristol and others.

Friday . Nov. 10 Special arguments.

Devaux and another v. Conolly.
Robinson and ux. v. Marquis of Bristol and others.
Peterson and another v. Davis.

Wednesday, Nov. 15 } Special arguments.
Friday . . . . 17 }

REMANET PAPER.

New Trials of Easter Term, 1847.

Suffolk.—Vipan v. Gay and others.
Suffolk.—Same v. Same.
(to stand over indefinitely by consent *per cur.* 31st Jan. 1848.)

New Trials of Trinity Term last.

Middlesex.—Barnes, administrator, v. Ward.
Middlesex.—Young v. Geiger.
Middlesex.—Same v. Same.
London.—Alexander v. Mackenzie, pub. offi.
London.—Belcher & others, assignees, v. Patten.

New Trials of Michaelmas Term, 1847.

Middlesex.—Hopwood v. Whaley.
Middlesex.—Collins v. Bennett and others, exors.
Middlesex.—Jenkinson and another v. Raphael.
Middlesex.—Doe Cotesworth and others v. Skinner.
Middlesex.—Edmonds and others v. Challis and another.
Middlesex.—Nind v. Arthur.
London.—Blandy v. De Burgh.
London.—Powell v. Bradbury and another.
London.—Beard v. Egerton and others.
London.—Croll v. Edge.
London.—Smith v. Roberts.
London.—Daw, jun. v. Butler and another.
London.—Leader and another v. Purday.

New Trials of Hilary Term last.

Middlesex.—Caunt v. Thompson.
Middlesex.—Same v. Same.
Middlesex.—Tappenden, a pauper, v. Ball.
London.—Schwartz v. Sharp and another.
London.—Benett v. The Peninsular and Oriental Steam Navigation Company.
London.—Crowther v. Solomons.
London.—Russell v. Briant.
London.—Tappin v. City Steam Boat Company.
London.—Cockburn and another v. Alexander.

New Trials of Easter Term last.

Middlesex, Kinning v. Buchanan, Gent.
Middlesex, Duke of Brunswick v. Slowman and others.
Middlesex, Same v. Same.
Middlesex, Same v. Same.
Middlesex, Sargent v. Gannon.
Middlesex, Bowyer, assignee, v. Long.
Middlesex, Thompson v. The Wesleyan Newspaper Association, (unless special cause consented to.)
Middlesex, Same v. Same.
Middlesex, Summers v Davis, sued, &c.
Middlesex, Franklin v. M'Leod.
London, Richards v. London, Brighton, and South Coast Railway Company.
London, Lewis v. Campbell.
London, Walker v. Giles and another.
London, Bayley v. Wilkins.
London, Somerville v. Hawkins.
London, Jones and another v. Broadhurst.
Herts, doe (Gatteridge) v. Sowerby.
Herts, Hankin, executor, &c., v. Smith, heir, &c., and others.
Kent, Sisco v. Curling and another.
Kent, White and others v. South Eastern Railway Company.
Surrey, Pennell and others, assignees, v. Stephens.
Surrey, Mayhew and another, assignees, v. Henrick.
Surrey, Same v. Same.
Surrey, Turner v. Meryweather.
Essex, Wright v. Colls.
Somerset, Doe (Kinglake) v. Bevins.
Somerset, Lee v. Lester.
Cornwall, Peter v. Daniel.

New Trials of Trinity Term last.

Middlesex—Sawyer v. Langford.
Middlesex.—Thorogood admix. v. Bryan.
London.—French v. Candy.
London.—Maxey v. Thomas.
London.—Rathbone v. Clarke.
London.—Green v. Slack.
London.—Groom and another, assignees, v. Watson.
London.—Smith v. Thompson.

CUR. AD. VULT.

Couling v. Coxe.
Doe Miller and others v. Claridge.
Smith v. Marsack.
Howden v. Standish, Esq.
Morgan and another, executors, v. Earl Abergavenny.
Smith v. Kenrick.
Murray and others v. Hall.
Phillips v. Lewis.
Lord Newborough v. Schroder.
Nickels v. Ross, jun.
Same v. Same.
Garrard v. Tuck (in dower).
Fitzgerald v. Fitzgerald.
Hopwood v. Thorn.
Young v. Raincock.
Crosfield v. Morrison.

APPEAL CASE, VIZ:

No.	County.	Appellant.	Respondent.
7.	Worcestershire	Palmer	Allen.

Exchequer of Pleas.

See p. 515 of the last Volume.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 11, 1848.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

REMOVAL OF THE COURTS OF EQUITY TO LINCOLN'S INN.

THE subject which has peculiarly occupied the attention of both branches of practitioners in the several Courts of Chancery, since the commencement of the Term, is that of the removal of the Courts to Lincoln's Inn during the prorogation of Parliament,—in the propriety of which all parties concur; but to be followed by Sittings at *Westminster during the whole Session of Parliament*. Such, at least, was the understanding of the Lord Chancellor's intention, as announced on the first day of Term.

It is remarkable that the memorial of the Bar, presented to the Lord Chancellor in Hilary Term last, expressly asked his lordship to hold the Sittings in Lincoln's Inn *during such time as parliament was not sitting*. The limited nature of the application was designed, no doubt, to suit the convenience of the Leaders who attend the House of Lords and Parliamentary Committees. The Lord Chancellor, it appears, has "kept the word of promise to the ear." The prayer has been granted; the Courts are now sitting in Term time in Lincoln's Inn, and will probably so continue throughout the next Term. But then is to follow, what seems the Bar did not apprehend, namely,—the return of the Court to Westminster from the beginning of February to the middle of August,—thus extending the Sittings there from three to six months; and, during such Sessions as the last, absorbing well nigh the whole legal year. It is probable that the Judges did not contemplate the extent of the inconvenience which would thus arise. At present, no harm has been done; on the contrary, the Juniors of the Equity Bar have to thank the Court for its compliance with their own request, and they are daily reaping the advantage of the change, so far as it has yet proceeded. Their immediate satisfaction, however, as well as that of the solicitors, is bitterly alloyed by the apprehension of future inconvenience by long-continued Sittings at Westminster.

Now, the memorial of the Solicitors took up the general question, and applied for a total removal to Lincoln's Inn. The Lord Chancellor, on announcing his intention to try the experiment of a change of locality, adverted only to the application of the Equity Bar. Nothing was said of the memorial of the Incorporated Law Society collectively, nor of the several memorials of the solicitors of London and of Manchester individually. Their prayer, it appears, could not be granted. The Bar memorial only was noticed, but not, of course, from any disrespect to the solicitors, representing, as they do, the direct and immediate interests of the suitors, and therefore, independently of their own merits, entitled to be heard in justice to their clients. It is observable, however, that the Lord Chancellor has adopted the measure merely by way of "experiment," and distinctly expressed his willingness to hear further suggestions.

We understand that at the meeting of the Outer Bar, on Saturday, it was resolved to send another deputation to the Lord Chancellor to induce a reconsideration of the intended Sittings at Westminster in Hilary and Trinity Vacations. The deputation, we are informed, was favourably received, and the Lord Chancellor will take the subject into further consideration before next Term, with a view to such arrangement as may be most generally convenient for the sitting of the Courts.

We do not entertain all the apprehensions which are rumoured on the occasion. We recollect that no less than four of the present Equity Judges were the most decisive witnesses before the Select Committee of the House of Commons, in 1841, on the question of the removal of the Courts *permanently* from Westminster to the vicinity of Lincoln's Inn. Each of the learned judges had been in large practice at the Bar, and spoke from personal knowledge, not only of the loss of time to themselves by the Sittings at Westminster, but of the inconvenience to solicitors and the delay and injury sustained by their clients. The Lord Chancellor considered "the Courts holding their Sittings at Westminster extremely inconvenient." "He had no doubt that the Courts sitting under one roof, near the Chambers and Offices, would be a very great convenience to the profession and to their clients;" that "it would save expense, since everything which is for the convenience of the practitioners is ultimately for the benefit of the clients." The Master of the Rolls, the Vice-Chancellor of England, Vice-Chancellor Wigram, the Earl of Devon, (a former Master in Chancery,) Masters Dowdeswell and Farrer, Mr. (now Mr. Justice) Erle, Mr. Sutton Sharpe, Mr. M. D. Hill, Mr. S. Martin, and Solicitors from various parts of the Metropolis,—all concurred in the necessity of concentrating the Courts and Offices in the vicinity of Lincoln's Inn. The present Chief Justice of the Common Pleas, then the Solicitor-General, had obtained and was the Chairman of the Committee. At that time it was proposed to erect an extensive building in the centre of Lincoln's Inn Fields, but many powerful objections prevailed against that position, and when the subject came again before the House of Commons, in 1845, another site was suggested, lying between the Middle Temple, on the south, and Lincoln's Inn, on the north, bounded on the east by Chancery Lane, and by Clement's Inn and New Inn on the west.

Looking at the former opinions of the Lord Chancellor and the other judges, we have good reason for believing that when the facts are again brought to their notice, they will be induced to reconsider the contemplated arrangement, and continue the Sittings in Lincoln's Inn, with the exception (if it must be so) only of Easter and Trinity Terms. This will be an "instalment of justice," and a movement in the right direction. In the progress of the Houses of Parliament, and before their completion, the inconvenient and inadequate Courts which adjoin the venerable Hall, must, doubtless, be removed to give uniformity to the building,—and where can they be re-constructed? The dimensions of the site are not one-fifth equal to the space rquired for the convenient administration of justice and the accommodation of the suitors, their witnesses, the Bench, the Bar, the Solicitors, and the Public. We believe that, without any special favour to the lawyers, the public convenience and the course of events will ultimately lead to the right result.

THE NEW COURT OF CRIMINAL APPEAL.

The Court proposed to be established under the act of last Session, (11 & 12 Vict. c. 78,) for the decision of reserved questions of law arising upon criminal trials, commences its sittings this day, but it is to be feared, that the machinery provided by the act is so defective as to render it more than doubtful whether an effective tribunal can be constituted under its provisions.

The act merely provides,[a] that the judge or commissioner, presiding at any Court of Oyer and Terminer and Gaol Delivery, or the justices at Quarter Sessions, may, in his or their discretion, reserve any question of law arising on a criminal trial for the consideration of the Justices of either Bench and Barons of Exchequer. The questions so reserved are to be certified to the Judges, in a case signed in the manner now usual, with the special circumstances upon which the same shall have arisen, and the Judges have full power to hear and finally determine the questions so reserved, and to certify their judgment, under the hand of the Chief Justice or Chief Baron, to the Clerk of Assize, or the Clerk of the Peace,

[a] See sect. 1, p. 403, vol. 36.

as the case may be. The jurisdiction thus given to the Justices and Barons, it is declared,[b] may be exercised by five of them at least, one of whom must be a Chief Justice or Chief Baron, and they are to meet in the Exchequer Chamber, or other convenient place, and deliver their judgments in open Court, after hearing counsel, or the parties, in case the prosecutor, or the person convicted, shall think it fit that the case shall be argued.

It is left, therefore, altogether to the Judges to determine amongst themselves when and how often they are to hold sittings under the act, and how the duty of attendance in sufficient number to constitute a Court is to be provided for and regulated. It may be presumed that the legislature relied upon the acknowledged devotion of the Judges to the public service, and their untiring zeal in the discharge of their judicial duties, to supply these omissions; but there are other defects in the act of a more serious description. There is no power given to the Judges to appoint any officer to record their judgments, or give notice to the prosecutor and prisoner when any point of law has been reserved and is to be argued. The 3rd section of the act provides, that "judgment of the Justices and Barons shall be delivered in open Court, after hearing counsel or the parties, in case the prosecutor or the person convicted shall think it fit that the case shall be argued." We apprehend that, under these words, the prosecutor and the person convicted have a *right* to know when any point has been reserved, in order that they may respectively exercise the option given by the act, and have such question argued, if either of them shall think fit. By whom and when is this notice to be given? The prosecutor is most frequently a person bound over by the magistrate to prosecute, and who may naturally feel that he has discharged his duty to the public, as well as fulfilled his legal obligations, when he has attended at the Assizes or Sessions and given his evidence in support of the charge. In a great majority of cases, the prosecutor neither employs counsel nor attorney. The depositions of the witnesses are frequently handed to a counsel in Court, by desire of the judge or presiding magistrate, and the counsel thus selected at the moment conducts the prosecution, without any communication, direct or indirect, with the prosecutor. In this—which is by far the most numerous class of cases—to whom is notice to be given, that a point is reserved for the consideration of the Judges, and is to be argued at Westminster? If the notice is sent to the prosecutor, is it expected that he is, at his own expense, to employ an attorney to instruct a counsel to argue the question on behalf of the Crown, the more especially as the statute points out no mode by which a prosecutor in such case is to be reimbursed for his outlay? Again, let us take the case of a party convicted. He is in prison, or out of prison on bail. To whom is the notice to be given in this case? To the prisoner or his bail? Is the notice to state the precise point reserved, or only generally that some point has been reserved? and if the party convicted neglects, or is unable from deficiency of money, to appear by counsel to have the point reserved argued on his behalf, is judgment to be pronounced by default without argument? or are the Judges to hear the counsel for the prosecutor, and take care that, in the absence of the prisoner, his legal rights are not overlooked? The act throws a heavy responsibility on the Judges in all cases, and when a point is reserved in a case tried at the Quarter Sessions, and not before one of the Judges of the Superior Courts, the practical difficulties seem to be greatly increased, as the act omits to provide to whom the case reserved is to be transmitted by the presiding magistrate. The Judges, it seems, have determined upon a rotary arrangement, by which one of the Chiefs and four Puisne Judges or Barons are to sit in the Exchequer Chamber, on the second Saturday in every Term, for the hearing of reserved Crown cases; but the Chairmen of Quarter Sessions throughout the kingdom cannot be supposed to be in possession of the personal arrangements made by the Judges, and cannot, therefore, know the particular Judges to whose lot it may fall to determine any particular question reserved at Sessions, and to whom the reserved case should be transmitted, as composing the Court constituted by the act.

At present the whole matter is in the most unsatisfactory state. It is possible that, at the sitting of the Court this day, some rules may be promulgated which will enlighten the profession and the public as to the course of procedure intended to be adopted. If any regulations are publicly announced, we shall take an early opportunity of laying them before our readers. The subject is deserving the attention of all

[b] By sect. 2. See p. 404, vol. 36.

who interest themselves in the question on which so much diversity of opinion prevails, as to the expediency of allowing an appeal as matter of right in all criminal cases.

The merit—perhaps we might say the only merit—of the act of last Session, is, that it gives the parties the right of being heard by counsel upon reserved questions of law, and enforces upon the judges the obligation of publicly stating the grounds of their decisions. In other respects it is clearly defective, and can scarcely be said to establish a Court of Appeal.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

PETTY BAG OFFICE IN CHANCERY.

11 & 12 Vict. c. 94.

An Act to regulate certain Offices in the Petty Bag in the High Court of Chancery, the Practice of the Common Law Side of that Court, and the Enrolment Office of the said Court. [August 31, 1848.]

1. Whereas it is expedient to regulate the Offices of the Clerks of the Petty Bag of the High Court of Chancery, the practice of the common law side of that Court, and also the Enrolment Office of the said Court: Be it therefore enacted, That from and after 1st Jan. 1849, the offices of the said senior, second, and third clerks of the Petty Bag of the said High Court of Chancery shall be and the same are hereby abolished, and shall then cease and determine, without prejudice nevertheless to the rights and remedies of the present holder of any of the said offices to receive or recover any money which shall or may then be due or payable to him by virtue of his office for fees or otherwise.

2. *Appointment of officers.*—That from and after the said 1st Jan. 1849, there shall be an officer of the said Court who shall be and be called the clerk of the Petty Bag, and who shall execute and perform the duties of his office in person, and not by deputy: except in case of sickness, or other unavoidable cause, when he may appoint a deputy, with consent of the Master of the Rolls.

3. That Francis George Abbott shall be the first clerk of the Petty Bag; and that whenever and so soon as any vacancy shall occur in the office of the said Francis George Abbott or any future clerk of the Petty Bag, whether by death, resignation, removal, or otherwise, the Master of the Rolls shall, by some writing under his hand, appoint some fit and proper person to be clerk of the Petty Bag, every person so appointed being a person who for the space of five years has been an attorney of one of her Majesty's Superior Courts of Common Law, or a solicitor of the High Court of Chancery, and has during that period actually practised as such attorney or solicitor, and for whose appointment no pecuniary or other consideration whatsoever shall be directly or indirectly paid, given, or received: and the said Francis George Abbott, and every qualified person so appointed as aforesaid, shall hold his office during good behaviour, and shall or may be removed from his office by the Master of the Rolls, with the consent and approbation of the Lord Chancellor, for such misconduct or other cause as by him shall be deemed sufficient to justify such removal.

4. *Duties.*—That the clerk of the Petty Bag for the time being appointed by or in pursuance of this act shall have, possess, and exercise all and every of the powers, authorities, rights, and privileges which now are or heretofore have been held, possessed, or exercised by the said senior, second, and third clerks whose offices are hereby abolished; and the said clerk of the Petty Bag for the time being shall also perform and be subject and liable to all and every of the services, duties, and regulations which the said senior, second, and third clerks, or any of them, now are or but for the passing of this act would be bound to perform or be subject or liable to: Provided always, that the said clerk of the Petty Bag for the time being shall not by virtue of his office be an attorney of the said Court, and shall not, directly or indirectly, by himself or together with any partner, in his own name or in the name of any other person, practise, be, or act as the attorney, or the agent of any attorney, of any person whomsoever, in, about, or for the purpose of any action, suit, writ, proceeding, matter, or thing in the said office of the Petty Bag, or upon or in the common law side of the said Court of Chancery.

5. That no person to be appointed to the office of clerk of the Petty Bag at any time after the said Francis George Abbott shall have ceased to hold the said office, shall at any time whilst he shall continue to hold the said office, either directly or indirectly, by himself or together with any partner or person, in his own name or in the name of any other person, practise or act as an attorney or solicitor, or as the agent of the attorney or solicitor, in any Court of law or equity: Provided also, that in case the salary payable to the said Francis George Abbott in pursuance of this act shall at any time hereafter be increased so as to amount to 800*l.* per annum, then and in such case the said Francis George Abbott shall not at any time whilst he shall continue to hold the said office, either directly or indirectly, by himself or together with any partner or person, or other person, in his own name or in the name of any other person, practise or act as an attorney or solicitor, or as the agent of any attorney or solicitor, in any Court of law or equity.

6. *Salaries.*—That the said clerk of the Petty Bag shall receive by way of salary for performing the duties of his office the sum of 600*l.* per annum, but subject and without prejudice to the payment of all salaries or sums of money by any act or acts in force directed or authorised to be paid thereout, the said salary to commence and be computed from the 1st day of January, 1849, and be paid and payable quarterly, under orders

to be for that purpose made by the Lord Chancellor: Provided always, that in case parliament or the Lord Chancellor shall, with the advice and assistance of the Master of the Rolls, at any time or times hereafter transfer to the said office of the Petty Bag any further or other portion of the business of or in the said Court of Chancery, or shall assign any business or service for the suitors of the High Court of Chancery to be done or transacted by the said clerk of the Petty Bag, then and in every such case it shall be lawful for the said Lord Chancellor (if he shall think fit), with such advice and assistance as aforesaid, to order and direct that the salary of the said clerk of the Petty Bag shall be increased to such amount, not exceeding 800*l.* per annum, but subject as aforesaid, as the Lord Chancellor, with such advice and assistance as aforesaid, shall think proper and reasonable, having due regard to the whole of the duties to be performed by such clerk.

7. *Clerks.*—That the clerk of the Petty Bag may appoint to assist him in the business of his office such clerk or clerks as the Master of the Rolls shall from time to time by any order direct, and may from time to time remove any such clerk, and fill up all vacancies in the office of such clerks, whether occasioned by death, resignation, or removal, and that every such clerk shall be entitled under this act to such salary as the Lord Chancellor shall, with the advice and assistance of the Master of the Rolls, by any order direct; provided that if there shall be only one such clerk his salary shall not exceed the sum of 250*l.* per annum, and that if such clerks shall be more than one at the same time, the amount of such salaries shall not in any one year exceed the sum which, if equally divided between them, would admit of a salary of 250*l.* for each such clerk.

8. Salaries and expenses to be paid out of the Suitors' Fee Fund.

9. Officers taking gratuities, &c., to be removed from their office by the Master of the Rolls, and rendered incapable of holding any office.

10. *Regulation of business.*—That it shall be lawful for the Lord Chancellor, with the advice and assistance of the Master of the Rolls for the time being, from time to time to transfer any of the business heretofore done in the said office of the clerk of the Petty Bag to any other office of the High Court of Chancery, and to transfer any portion of the business of any other office of the High Court of Chancery to the office of the clerk of the Petty Bag, and thereupon the officers respectively charged with the duties of such offices to which such business shall be transferred shall do and perform the duties consequent on such transfer in like manner as if the same had been theretofore performed in such office to which the same shall be transferred, subject to such regulations, as to the payment of fees and otherwise, as the Lord Chancellor, with the advice and assistance of the Master of the Rolls, shall order or direct.

11. Chancery Common-Law Seal of Office to be provided and kept, and may be cancelled or altered from time to time.

12. *Documents admissible in evidence.*—That every document sealed with the said Chancery Common-Law Seal for the time being, and purporting to be a copy of any record or other document of any description, shall be deemed to be a true copy of such record or other document, and shall, without further proof, be admissible and admitted and received in evidence, as well before either House of Parliament as also before any committee thereof, and also by and before all Courts, tribunals, judges, justices, officers, and other persons whomsoever, in like manner, and to the same extent and effect as the original record or other document as would or might be admissible or admitted or received if tendered in evidence, as well for the purpose of proving the contents of such record or other document, as also proving such record or other document to be a record or document of or belonging to the said Court of Chancery, but not further or otherwise.

13. *Proceedings.*—That all such writs, records, instruments, documents, proceedings, and writings such as are or have been usually issued or delivered out of the Petty Bag Office, and made under or sealed with the Great Seal, except writs of summons and writs of election issued on the calling of a new parliament, and writs of restitution issued on the appointments of archbishops and bishops, shall be made under or sealed or stamped with the said Chancery Common-Law Seal for the time being; and every writ, record, document, instrument, proceeding, and writing which shall or may be made under or sealed or stamped with the said Chancery Common-Law Seal for the time being shall be of the like validity and shall have the same force and effect as if the same had been or were made or sealed with the Great Seal.

14. *Specifications and disclaimers.* — That from and after the 1st Jan., 1849, every specification or instrument in writing for describing or ascertaining any invention, and to be enrolled in Chancery in pursuance of letters patent under the Great Seal, shall be enrolled in the enrolment office of the Court of Chancery; and every disclaimer and memorandum of alteration to be enrolled in pursuance of an act passed in the 6 W. 4, intituled "An Act to amend the Law touching Letters Patent for Inventions," shall also be enrolled in the said Enrolment Office, whether the specification of the invention to which such disclaimer or memorandum of alteration shall relate shall or shall not have been enrolled in the said Enrolment Office; and the enrolment of every such disclaimer and memorandum of alteration in the said Enrolment Office shall be and be deemed to be the Enrolment thereof in the proper office, in pursuance of the provisions of the said act.

15. *Seal for the Enrolment Office.*—And whereas it is expedient to facilitate the proof of the due enrolment of specifications, deeds,

and other instruments in the said Enrolment Office, and also of copies of the enrolments thereof: Be it therefore enacted, That such a seal or stamp as the Master of the Rolls shall approve of shall be provided and kept in the said Enrolment Office, and from time to time, when the Master of the Rolls shall think fit, a new seal or stamp shall be provided in place of any seal or stamp for the time being kept and used in the said office, and whenever any new seal or stamp shall be so provided the old seal shall be forthwith cancelled; and the seal for the time being kept and used in the said Enrolment Office in pursuance of this act shall be and be called the Seal of the Enrolment Office in Chancery, and all Courts and other tribunals, judges, justices, officers, and other persons whomsoever, shall take notice of the said Seal of the Chancery Enrolment Office, and shall take notice of and receive in evidence every instrument and writing purporting or appearing to be sealed or stamped therewith, without proof that the same has been so sealed or stamped.

16. Certificates of enrolment to be given, and, when sealed, shall be admitted as evidence.

17. Copies of enrolments stamped with Seal of Enrolment Office to be admitted in evidence.

18. Punishment for forging or altering any seal or document.

19. *Fees.*—That it shall and may be lawful for the Lord Chancellor, with the advice and assistance of the Master of the Rolls, and he is hereby required, on or before the 1st day of January, 1849, to establish and ordain a table of fees to be thereafter taken by the said clerk of the Petty Bag, and for the Lord Chancellor, with such advice and assistance as aforesaid, from time to time afterwards to vary and modify the same as he shall think fit, and the fees so for the time being established or ordained shall be deemed and taken to be the lawful fees of the Petty Bag Office: Provided always, that no fees whatever shall be demanded or received by the clerk of the Petty Bag, or by any person employed by him in the said office, for or in respect of any act, duty, or service required to be done, performed, or rendered by him, them, or any of them in the course of any proceedings carried on in the said office directly at her said Majesty's instance, suit, and charge; and the said clerk of the Petty Bag, and the several persons employed by him in the said office, are hereby authorized and required to perform and render such acts, duties, and services as may be required in the course of such last-mentioned proceedings, without payment of any fee whatsoever in respect thereof.

20. Clerk of Petty Bag to keep accounts of fees received, and pay the same into the Suitors' Fee Fund.

21. *Solicitors entitled to practise as attorneys in the common-law side of Chancery.*—That every person who has heretofore been admitted a solicitor of the said Court of Chancery, and who is now a solicitor of the said Court, shall, by virtue of his admission and this act, become and be an attorney of the said Court; and every person hereafter admitted a solicitor of the said Court shall be also admitted and become an attorney of the said Court; and the solicitor of her Majesty, the solicitor of each of the several public boards of this realm, and every person so to become or be admitted an attorney of the said Court as aforesaid, shall be allowed and entitled to practise as an attorney on the common-law side of the said Court of Chancery, any law or usage to the contrary notwithstanding, upon payment, nevertheless, of such fees as shall or may be payable in respect of the business transacted by the said attorneys; and all such documents, proceedings, writings, acts, duties, services, matters, and things as before the passing of this act were or ought to be prepared, conducted, done, or performed by the said senior, second, and third clerks of the Petty Bag respectively, as the attorneys of or for their clients respectively, shall or may, from and after the said 1st day of November, 1848, be prepared, conducted, done, and performed by such clients respectively in their own proper persons, or by some person who shall become or be admitted and actually be an attorney of the said Court by virtue of this act, and not by any other person whomsoever.

22. Writs may be tested in term or vacation.

23. And returnable in term or vacation.

24. Proceedings of the Court may be in term time, or in vacation.

25. Writs of *scire facias* may be directed to the sheriff of any county.

26. Prosecutors' names to be inserted in writs of *scire facias*.

27. Declarations, &c. in *scire facias* to be delivered and not filed, 5 & 6 W. 4, c. 83.

28. Pleas in *scire facias* to be delivered and not filed.

29. Issues in *scire facias* to be tried in any of the Superior Courts.

30. Issues upon traverses to be tried in like manner as issues in *scire facias*.

31. The record of issue to be filed in the Office of the Petty Bag.

32. Costs to be taxed by one of the Masters of the Court.

33. Writs and proceedings to be prepared by the parties or their attorneys.

34. The judges may dispose of matters arising or incident to any action on the Common Law Side of the Court of Chancery.

35. The Master of the Rolls may make orders for the custody, &c. of the records.

36. General rules and orders may be made by the Lord Chancellor and Master of the Rolls.

37. Officers' privilege of suing abolished.

38. Proviso as to existing actions by or against officers.

39. Parties or attorneys to cause their names to be entered in the book at the Petty Bag Office.

40. Affidavits may be sworn before the clerk of Petty Bag.

41. Saving the jurisdiction of Lord Chancellor and Master of the Rolls.

42. Forms of writs to be settled and approved by the Lord Chancellor and Master of the Rolls.

43. Courts of Common Law to take cognizance of writs.

44. Monies paid into Court for her Majesty's use shall continue to be received as heretofore, &c.

45. Power to grant compensations with consent of treasury.

[We shall have to notice more fully some of the latter clauses.]

LIVERPOOL LAW SOCIETY.

REPORT OF THE COMMITTEE.

For the year ending the 1st November, 1848.

YOUR Committee have to report, that during the last year three new members, Mr. John Yates, jun., Mr. Richard Williams, and Mr. William Statham, have been admitted into the Society; and to mention, with regret, the death of two members, Mr. Brabner and Mr. Hodgson.

Your Committee have devoted some time and attention to the preparation of forms of Bills of Costs suitable to ordinary cases; printed copies of which have been circulated among the members of the profession in Liverpool. Your Committee hope that these forms have proved a convenience to the profession, and may tend to promote uniformity of charges.

During the last Session of Parliament very few bills were brought in which required the attention of your Committee.

Two, however, of great importance were introduced late in the session: the one into the House of Lords by Lord Brougham, and the other into the House of Commons by Mr. Bouverie and Mr. Baines, both being for the consolidation and amendment of the Law of Bankruptcy. These bills were referred by a special meeting of this Society to Mr. Norris, Mr. Lowndes, Mr. Duncan, and Mr. Falcon, to consider and to watch their progress; but neither bill was further proceeded with.

Your Committee deem this a fitting opportunity to call your attention to the too prevalent practice of counsel on the circuit urging causes into arbitration, and this very often against the express instructions of the attorney employing them, and sometimes against the express wish of the attorneys on both sides.

Your Committee consider that the attorney is the fittest party to judge of the propriety of a reference, and that counsel ought not to interfere further than by giving advice or suggesting a reference to the attorney, but not to the Court.

Your Committee take this opportunity of again repeating their recommendation to the Members of this Society to appoint, on all suitable occasions, attorneys practising in Liverpool, as arbitrators in any causes or matters of difference in which such appointment may be satisfactory to their clients. And your Committee have reason to think there are many cases where two arbitrators are chosen by the parties, in which the clause in the agreement of reference for the appointment of the third arbitrator might with advantage to the parties be limited to a selection from attorneys practising in Liverpool.

The balance of cash standing to the credit of the Society, amounts to the sum of 160*l.* 12*s.*

The Members of the Committee who now retire from office are,—Mr. H. H. Stratham, Mr. Deane, Mr. Lace, Mr. Lloyd, and Mr. Ashton.

Extracts from the proceedings of the Annual General Meeting of the Liverpool Law Society, held the 1st Nov. 1848.

The Report of the Committee having been read, it was resolved,—

That the Report be adopted and printed and a copy sent to each Member of the Society, and that copies be sent to the Editors of the "Legal Observer" and "Law Times."

The following Members, namely, Mr. North, Mr. H. H. Statham, Mr. Carter, Mr. Forshaw, and Mr. Bateson, were elected by ballot Members of the Committee.

UNPROFESSIONAL PRACTICE.

RESOLUTIONS OF THE WOLVERHAMPTON LAW SOCIETY.

Passed at a Quarterly Meeting of the Committee, held on Friday, 20th October, 1848.

THE Committee having been informed, that, on the recent decease of Mr. Corser, (a member of the Association,) written and other applications were made to some of his clients by several solicitors of Wolverhampton, asking for the professional business of such clients:

Resolved, that the Committee have learned with great regret the fact of this breach of honourable conduct and professional propriety.

That they consider the general prejudicial tendencies of such applications as too apparent to require a renewed exposition.

That such applications by any solicitor of experience are wholly indefensible, and when made by any of extensive business, must justify (in addition to the more obvious censure) a charge of grasping selfishness, whilst, on the part of the young practitioner, they could be in a slight degree only palliated by the circumstances of youthful impatience and unreflecting zeal, inasmuch as an intuitive sense of their impropriety might, in the absence of experience, be reasonably expected to exist.

That copies of these resolutions be transmitted to the honorary members of the association, to the solicitors practising within the Circuit referred to in the society's rules, and to the secretaries of the Incorporated and Metropolitan and Provincial Law Societies.

COUNTY COURT FEES.

POSSESSION OF PREMISES.

An application was made to Mr. Elliott, at the Lambeth Police Court, on behalf of a gentleman named Franklin, for process to obtain legal possession of a house and premises which had been in the possession of a tenant named Guy, who deserted nine months ago, so that there was at present three quarters' rent due.

The applicant stated, that understanding he could obtain possession of the premises by a less tedious as well as less expensive course, by going to the County Court, he went to that of the district near Camberwell Green. He there explained to the clerk the nature of his application, and a demand was made of 1*l.* 13*s.* 4*d.* as the Court fees for the process, which he paid. On that morning he attended at the County Court with his witnesses to prove his case, when the clerk demanded a further sum of 1*l.* 13*s.* 10*d.* as the fees of hearing. This amount he also paid; and when the case was called on the defendant did not appear, but the judge declared he had no jurisdiction in the matter, and that the plaintiff therefore must be nonsuited. On recovering from the surprise which so unexpected a conclusion had created, he applied to the clerk for the return of 3*l.* 7*s.* 2*d.* he had uselessly expended in fees, but that gentleman refused to return a single farthing. The applicant added that he considered it an exceedingly hard case that, together with the loss of time, he should have been mulcted of 3*l.* 7*s.* 2*d.* for no earthly good, and that the clerk of the Court should be allowed to profit by his own inexperience or ignorance in the first instance of the jurisdiction of the Court.

Mr. *Elliott* did not offer any opinion on the subject, but granted the applicant's request. *The Daily News*, 24th Oct.

MOOT POINTS.

STATUTE OF LIMITATIONS.

A. dies intestate and seised in fee of Black Acre. The heirs of *A.* do not enter for twenty years; but on *A.*'s death, *B.*, a stranger, enters and holds adversely to the heirs of *A.* for 18 years, then goes a journey to the Continent with an "*animus revertendi*," but leaves no one to hold possession for him of Black Acre, and in his absence *C.* enters thereon, and holds for two years, when *A.* returns and claims the estate under the provisions of the Statute of Limitations, (3 & 4 W. 4, c. 27). Does the estate belong to *B.* or *C.*, the heirs of *A.* being clearly barred?

The difficulties are these:—If *B.* can bring ejectment and get into possession, he must do so on an 18 years' adverse possession; and if *C.* is to hold against all the world, he does so on a two years' adverse possession.

Has a husband (tenant by the curtesy of his wife's freehold lands,) such an estate for life as will prevent his wife's entering during his life, and therefore prevent the statute running against her issue, (who, of course, would claim through her,) till his death.

W. C.

LECTURES AT THE INCORPORATED LAW SOCIETY.

The Lectures at the Hall of this Society commenced on Friday the 3rd instant. Mr. Jebb, of the Equity Bar, delivered his first Lecture, taking a general view of the system of *Pleading*,—comprising the Equity with some of the prominent points of Common Law Pleadings, and combining with many historical references, various practical illustrations.

Mr. Maynard commenced his Course on Monday the 6th, with the *Law of Executors and Administrators*—a subject of very general and practical utility.

Mr. Nalder entered on Friday the 10th, on the first part of his Course, and treated on the subject of *Powers*, and the various sorts thereof.

About 150 subscribers, besides the members of the society, have already joined the class.

ARRANGEMENT OF BUSINESS.

Queen's Bench.

The *Special* and *Demurrer* Paper will not be taken until after the Term.

The *New Trial* Paper will be taken on Mondays and Thursdays after motions, and on Tuesdays and Fridays the New Trial Paper instead of the Special Paper.

ENCROACHMENTS ON THE PROFESSION.

NOTARIES PUBLIC.

To the Editor of the Legal Observer.

Sir,—In the Legal Observer of Saturday the 23rd September last, is an article headed—"Encroachments on the Rights of the Profession—Notaries Public," commenting upon unqualified persons appointed to the office of Receiver of Droits of Admiralty, under the recent act 9 & 10 Vict. c. 99, for consolidating and amending the laws relating to Wreck and Salvage.

I am a solicitor and notary public residing and practising in this town for the last 28 years, and my son has served his articles to both professions. On the passing of the act alluded to, I wrote to the Receiver-General of Droits, Lancaster Place, Strand, stating the lawless habits of the boatmen and others on this coast, (several of whom I prosecuted to conviction under the former statutes relating to wrecks,

&c.,) and offering to accept the appointment. In reply to this application I was informed, that the collector of customs at the port had for some time prior acted as deputy for this part of the coast. Until this communication I did not know that such a person existed here, as upon no occasion during the time named did he ever appear in any matter where he ought to have been prominently known.

Since the passing of the act, however, I find pains have been taken to impress upon masters of ships, that the statements made before the receiver under the 10th section are sufficient for all purposes, and I have no doubt that my practice as a notary public has been injured by it; the notaries, as you very properly observe, are the only proper persons to fill such appointments, from their general knowledge and professional qualifications.

W. S. P.

Scarborough, 1st Nov., 1848.

TAKING OUT AND RENEWAL OF ATTORNEYS' CERTIFICATES.

Last day of Michaelmas Term, 1848.

Queen's Bench.

Aldrich, Frederick, Bath.

Bird, Edward, 44, Devonshire St., Bloomsbury; Henstridge; Stalbridge; and Aldenham Terrace.

Howorth, John, jun., Bury.

Jesse, Robert, Taunton.

Johnson, John Fortin, 20, Chester Street, Brook Street, Lambeth.

Legh, Charles, 44, Seymour Street, Euston Square.

Templeman, Herbert Coates, Quennevals, Wirwignes, pas de Calais, France.

Thompson, John, Darlington.

Turner, Thomas Peregrine, 25, Great Ormond Street.

Trappes, Henry, Manchester.

Applications to a Judge at Chambers on the 27th day of November.

Bloodworth, Henry, Kimbolton, Southampton Buildings.

Boyle, Charles, Billiter Square.

Beal, Henry Ridley, Bedford Row.

Blake, James Henry, Bury St. Edmund's.

Brown, Thomas, 80, Snow Hill, Sea Coal Lane; Three Tun Passage.

Bell, Joseph Copeland, 2, Euston Square.

Bond, Albany Carrington, Great Amwell, near Ware.

Bone, Barnard, 21, Salisbury Street, Portman Market; Rose Cottages, Edgeware Road; and King Street, Portman Square.

Bell, Richard, 3, Park Place, Loughborough Road, Brixton.

Black, Edward, Liverpool.

Chilcot, Edward, Truro; Gower Place; New Milman Street.

Cutts, John, jun., 40, Penton Place.

Charlton, William Webb Beckett, 14, Michael's Place, Brompton.

Chilton, James, 6, Dalston Place, Dalston; Prince's Street, Spitalfields.

Chippindale, William, 2, Charlotte Street, Fitzroy Square.

Dewes, John, York.

Dodd, Edward, Warwick.

Dain, Horatio, Walnut Tree Walk, Lambeth.

Davies, George Sidney, Crickhowell.

Ellaby, William Francis, 47, Liverpool St., New Road.

Farmer, W. Frs., 47, Nelson Sq., Blackfriars Road; South Grove, Peckham.

Greenwell, Walpole Eyre, 26, Allsop Terrace, New Road.

Hibbit, Henry, Battle; Lincoln Street, Chelsea.

Hawkins, John, Greenhouse, Dymock; Glocester; Amersham.

Hunt, Thomas, Oakenrod Hall, Rochdale.

Hanbury, J. T., 9, Judge Place East, New Road; 20, Nelson Sqr., New Peckham.

Jay, Samuel John, Bury St. Edmund's.

Joachim, Bristow, 34, Gower Place, Euston Square.

Keyes, Robert James, 102, Great Russell St., Bloomsbury.

Kennedy, Michael, Cheshunt.

Lomax, James, 40, Somerset Street, Portman Square.

Lawrance, J. B., 8, Cottage Green, Camberwell; Westmoreland Place, Camberwell.

Moody, Enos, Lincoln, Wragley.

Moule, Frederick George, 28, Michael's Place, Brompton.

Maddock, S. H. Clarke, Lincoln's-Inn-Fields; Cirencester; Sloan St., Knightsbridge.

Osborne, John Francis, 31, Gibson Square, Islington.

Pratt, Charles, 326, Albany Road, Camberwell.

Pratt, Thomas, 8, Upper Queen's Buildings, Brompton Road; Wells.

Polydore, Henry, 25A, Great College Street, Camden Town; Kentish Town.

Porter, Joshua Charles, Andover.

Rylance, James, Wigan.

Sworder, Thomas, jun., Ceunen Tower, Llandilo.

Stable, William Henry, 29, Lombard Street; Carlisle; Rochester.

Shute, Edward Parker, 40, Gower Place, Euston Square.

Salt, John, 6, South Square, Gray's Inn; Park Street, Westminster; Fulham; and Sudbury.

Salmon, George, 20, Southampton Row, Russell Square.

Scratton, Daniel, jun., 9, Albert Terrace, Bishop Road, Paddington.

Taylor, D. Passmore, 12, St. James's Place; Hampstead Road; Gray's Inn Lane.

Tweed, George Tash, 11, Upper Brook St., Gilbert Street.

Turner, Joseph, Sheffield.

Taylor, Frederick John, Liverpool; and 7, Calthorpe Place, Gray's Inn Road.

Underwood, Alfred, 24, Red Lion Square; and Westbourne Grove.
Weller, George, Park Place.
Waltham, Richard, Kingston-upon-Hull.
Woodhouse, C. J., 9, Wilmot Street, Brunswick Square; Frederick St., Leominster.
Willmott, Frederick, 83, High Street, Southwark.
Walker, John, Bristol.
Weston, William Henry, 89, Guilford St.
Werninck, Henry Hope, Paris and Brussels.
Wilmot, William Bendry, Chippenham; and Cloudsley Square, Islington.
Windsor, Other Richard, Hanley.

NOTES OF THE WEEK.

WINTER CIRCUIT.

We understand that the crowded state of the gaols in Yorkshire and Lancashire has already been represented to the authorities at the Home Office, and that it is determined to hold a Circuit in these counties, at all events, for the trial of prisoners, during the approaching month of December. Whether the Commission of Gaol Delivery will extend to other counties, has not yet, we believe, been finally resolved upon.

LAW PROMOTIONS.

Mr. C. R. M. Jackson, of Lincoln's Inn, lately Secretary to Vice-Chancellor Wigram, has been appointed to the important office of her Majesty's Advocate-General in India, in the place of Sir J. Colville, promoted to the office of Judge of the Supreme Court of Bengal, upon the resignation of Sir Henry Wilmot Seton, knt., who has since died on the return voyage from Calcutta to England.

We understand the announcement that appeared in some of the daily newspapers, and to which we gave increased circulation, as to the appointment of Mr. Hare to the office of Secretary to Vice-Chancellor Wigram, is incorrect. The office has been conferred upon Mr. Heathcote.

Mr. Vaughan, of the Inner Temple, has been appointed by her Majesty, Regius Professor of History at the University of Oxford.

SALARIES OF THE COUNTY COURT OFFICERS.

The clerks and other officers of the County Courts are in daily expectation that an Order in Council will issue, declaring that they shall be paid hereafter by salaries instead of fees; and as the Order of the 11th August last (published 36 L. O. 340,) fixed the salaries of the judges at 1,000*l.* per annum, which was 200*l.* below the limit specified in the 9 & 10 Vict. c. 95, it is apprehended the clerks' and other officers' salaries will be settled upon a corresponding scale. If the clerks were permitted to continue to receive the fees which they now receive under the act, their emoluments would in some instances exceed the sum now received by the judges.

MOTIONS FOR NEW TRIALS.

Not only the first four days of Term, but all the days since the commencement of the Term, have been occupied in the Common Law Courts, in hearing motions for new trials in cases tried upon the Circuits or the Sittings after Trinity Term. Formerly the rule was, that motions for new trials must he made within the first four days of Term, but of late years the number of motions of this description has multiplied, and at the end of the fourth day it is found necessary to make a list of the cases in which counsel have been instructed to move, and have not yet had the opportunity of moving, for new trials. On Monday last such a list was sent round the Bar in the three Courts of Common Law; and in the Queen's Bench thirty cases were entered, in which counsel instructed had not an opportunity of moving; in the Court of Common Pleas fifteen cases were entered; and in the Court of Exchequer no less than fifty-five cases. The cases thus entered in the New Trial Motion Paper have occupied the Common Law Courts for a great part of the week, nearly to the exclusion of all other business.

SPECIAL PAPER IN THE QUEEN'S BENCH.

The Court of Queen's Bench has given notice that it is not proposed to hear the arguments in Special Cases set down for hearing in that Court during the present Term, but it is intended to reserve them for the Sittings after Term. This arrangement is more convenient in some respects, but as the ingenuity of special pleaders frequently enables parties to create delay by special demurrers, the postponement of arguments in cases of this description, frequently produces a miscarriage of justice. On Tuesdays and Fridays during the Term, on which the Special Paper has been heretofore taken in the Queen's Bench, the Court will, during the present Term, proceed with the New Trial Paper.

MICHAELMAS TERM EXAMINATION.

Thursday the 9th being the last day for

leaving the testimonials previous to the examination, it appears the number of Candidates, stated in some of the papers to be upwards of 200, has been reduced to 128.

The examination will commence at 10 o'clock on Tuesday morning, the 14th instant. The examiners are Master Ray, Mr. Lawford, Mr. Ranken, Mr. Pickering, and Mr. Whitmore.

RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Armistead v. *Durham.* Nov. 2, 1848.

ORDERS OF 1845.—AMENDMENT.—DEMURRER.

The 34th section of the 16th Order, and the 70th Order of May, 1845, as to the time allowed for amending a bill, apply to an order made on the allowance of a demurrer giving liberty to amend, if no time for amending is mentioned in the order.

THIS was a motion to take an amended bill off the file for irregularity, under the following circumstances:—On the 28th of March last, an order was made allowing a demurrer to the original bill, with liberty to amend. No time was mentioned in the order within which the amendment was to be made; and no amendment was made until the 7th of August.

Mr. *Walpole* and Mr. *Tennant*, in support of the motion, contended, that as the Court had not allowed any other time for amending, the case fell under the 34th Article of the 16th Order, and the 70th Order of May, 1845; and that, as the plaintiff had not complied with those orders by amending within 14 days after obtaining his order to amend, it became inoperative, and the bill was out of Court by the allowance of the demurrer. If the General Orders of the Court were not held to apply to such a case, a plaintiff whose bill was demurrable would have an advantage over one whose bill was good. The General Orders applied to an order to amend, though made by the Court after argument, and not as of course. *Edge* v. *Duke*, 10 Bea. 184.

Mr. *Turner* and Mr. *Hetherington*, in opposition to the motion, urged, that the effect of the order made in this case really was to give an unlimited time to amend, subject, of course, to applications on the part of the defendant to the Court, if there should be unreasonable delay. The orders referred to by the defendants were substituted in the place of the 14th Order of 1828, which required that each order to amend should contain an undertaking to amend within three weeks, and did not apply to the case of an order to amend made by the Court on the allowance of a demurrer, as was shown by the provision, that in default of the amendment being made within a fortnight, the "cause as to dismissal should stand in the same situation as if such order (to amend) had not been made." The orders clearly contemplated such bills only as were in a state to be dismissed, which a bill, after the allowance of a demurrer, was not. The plaintiff had acted *bonâ fide* under an impression, countenanced by the officers of the Court, that the General Orders did not apply to this case.

Lord *Langdale* said, that the existence of such an opinion as had been referred to among the officers of the Court, would make a considerable difference in the way in which he might treat the motion, otherwise he saw nothing to restrict the application of the General Orders to the present case, or to another case referred to in the argument, that, namely, of an order to amend, by adding parties made at the hearing; and his present opinion therefore was, that the order to amend had become void before the amendment was made, and that the present bill was irregular. As to the reference which had been made to the Orders of 1828, he must repeat what he had before said more than once, that he could not allow those orders to be any reason for modifying the effect of the existing orders.

His Lordship then expressed his intention of inquiring into the opinion said to be entertained by the officers of the Court; but ultimately, with the consent of Mr. Walpole, made no order on the motion, but gave the defendant the costs.

Vice-Chancellor of England.

Peel v. *Hague.* August 3, 1848.

ENLARGEMENT OF PUBLICATION.—AFFIDAVITS.

Plaintiff having unsuccessfully applied to the Master for an enlargement of publication, applied by motion to the Court for the same purpose: Held, *that affidavits filed since the hearing before the Master might be read on such motion.*

IN this case plaintiff applied to the Master to enlarge publication, but was refused, the Master however enlarging publication so far as to give him an opportunity of applying to the Court for the same purpose. A motion was now made for enlargement of publication.

Mr. *Steuart* and Mr. *Toller*, for the plaintiff, proceeded to read affidavits filed since the hearing before the Master.

Mr. *Bethell* and Mr. *Whitbread*, contrà, objected to such affidavits being read, on the ground that it was an appeal motion. *Christ's Hospital* v. *Grainger*, 10 Jur. 37; *Carr* v. *Appleyard*, 1 Kee. 725; 2 My. & Cr. 476.

The *Vice-Chancellor* said, the application to the Master was made under the act 3 & 4 W. 4, c. 94, which directed that the application to

enlarge should be made in the first instance to the Master, "and that it should be lawful for either party to appeal by motion from the order made on such application to the Lord Chancellor, Master of the Rolls, Vice-Chancellor," &c. There was nothing in the act to induce him to put such a construction upon its provisions as to prevent the reading of affidavits not used before the Master on such appeal motion. When an appeal motion was made before the Lord Chancellor, it was the common practice to apply for leave to read new affidavits, and there was nothing in the act whatever to prevent it.

Vice-Chancellor Knight Bruce.

Billing v. *Webb.* Jan. 12, 1848.

SUBSTITUTED CONVEYANCE.—STATS. 1 W. 4, c. 60, and 3 & 4 W. 4, c. 74.

A creditor's suit, to which M. W., *a* feme covert, *was a party, was instituted. She was heir-at-law of the intestate whose estate was administered. A decree in the suit was made, directing a sale. A sale was made, and* A. B. *became purchaser.* M. W. *executed the conveyance, but refused to acknowledge. A petition was presented under the Fines and Recoveries Act,* 1 *W.* 4, *c.* 60, *praying that she might be declared a trustee; whereupon the Court directed a reference to the Master to inquire whether she was a trustee, and whether the conveyance executed by her was a proper one to be acknowledged by her; and if not, to approve of a proper conveyance.*

THIS was a petition of Mr. Christopher Darby Griffith, praying the Court to declare Mrs. Webb a trustee for the petitioner, and that a substituted conveyance, under the act of 1 W. 4, c. 60, should be decreed, and that he should have his costs out of the fund in Court.

The facts of the case were these:—Ambrose Goswell was seised in fee of a cottage and three acres of land, in the parish of Padworth, in Berkshire, subject to a life estate of Joseph Win and Lucy his wife, and the survivor of them. In September, 1836, Goswell died intestate, leaving a widow and Mary Goswell, his only child. Soon after the intestate's death, Mary, his daughter, intermarried with James Webb. Ambrose Goswell, at the time of his death, was very much in debt, and a creditor's suit was instituted by the present plaintiff. The cause was in due course referred to the Master, who made his report, which was on 13th Jan., 1846, confirmed, and the Court ordered that all the real estates of the intestate should be sold, and that all proper parties were to join as the Master should direct. In pursuance of this order all parties attended before the Master, and the conditions of sale were settled. The estate was put up for sale, and the petitioner became the purchaser of a certain lot, and was duly confirmed as such by the Court. The purchase-money was paid according to an order of the Court, to the account of the Accountant-General, and by the last-mentioned order the Court directed all proper parties to join in the conveyance of the purchased lot to the petitioner. The widow of the intestate died before the purchase, and the fee had become vested in Mrs. Webb, late Mary Goswell, the only child of the intestate. A conveyance had been tendered to Mrs. Webb, to be acknowledged in pursuance of the Act for the Abolition of Fines and Recoveries, which she refused to do on the ground that she did not part with the property freely and voluntarily, and submitted that no power could compel her to make such a statement, as it would be utterly false; and the solicitor submitted that he could not make the requisite affidavit of the free will and readiness to be exercised by Mrs. Webb in the transaction. She executed the conveyance, but refused to acknowledge. Under these circumstances, the petitioner claimed the aid of the Court.

Mr. *Henniker*, for the petitioner, contended, under the decisions of *Stilwell* v. *Mellersh*, 4 M. & Cr. 581; *King* v. *Leach*, 2 Hare 57; *Jordan* v. *Jones*, 16 L. J. 93, that she was a trustee for him within the act.

Mr. *Wigram* and Mr. *Randall*, for Mrs. Webb, contended that she was not a trustee within the meaning of the act, and, at any rate, she could only be a trustee for the plaintiffs in the cause, and not for the petitioner.

Mr. *Russell* and Mr. *Chandless* appeared for the plaintiffs in the suit.

His Honour held, that she was a trustee for the petitioner, and it was referred to the Master to report whether a proper deed had been tendered to her for acknowledgement, and, if not, to approve of a proper deed, and appoint some one to convey.

Vice-Chancellor Wigram.

Bird v. *Heath.* April 29, May 6, 1848.

PRACTICE.—45TH ORDER, APRIL, 1828.

The omission in a decree of a clause, that would have been inserted by the registrar as a matter of course, under a direction for the "usual order," is a clerical omission, remediable under the 45*th Order of April,* 1828.

THIS was an application that a decree for redemption might be corrected by inserting the usual direction, that the defendant should pay what was found due "*within six months after the said Master shall have made his report.*" The plaintiff had died since the decree was made, and the defendant had filed a supplemental bill against his representative, for redemption or foreclosure; the representative had been solicitor to the deceased plaintiff, and the decree was in his possession. The present application was on a petition of the defendant.

Rogers, for the petition, contended that the omission was a mere clerical error, which the Court would correct under Order XLV. of April, 1828.

Speed, for the respondent, objected, that the omission of an entire sentence could not be considered a clerical error; that it did not appear that the decree was in the respondent's possession; and that the respondent, in his character of solicitor, had a lien for his costs on all the papers in the cause.

May 6. The *Vice-Chancellor* said, that where the correction sought to be made in an order, required the insertion of matter which could not have been introduced by the registrar as a matter of course, when the order was made, but which required the judgment of the Court to be pronounced upon it, the case was not one which fell within the 45th Order of April 1828; but where the correction was of a nature which would have been included under the direction for the "usual order" applicable to the case, without any expression of the judgment of the Court, he considered the case to be within the order; that, in that case, it was clearly matter of course to insert the direction for payment within six months, and he considered the omission a clerical one; that the respondent might search among his papers to ascertain if the decree was among them, and if the clause was not among them, he might make an affidavit of the fact at the next seal; that if the document was in the respondent's possession, he must produce it to have the correction made according to the prayer of the petition; that the respondent's possession or lien would not be otherwise disturbed, but he could not be permitted to avail himself of an accidental omission in the decree to deprive the opposite party of the benefit of the suit.

The affidavit not being made, the order passed.

Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

Clutterbuck v. *Jones*. Michaelmas Term, Nov. 7, 1848.

EXAMINATION OF WITNESSES.

The Court will not grant a commission to examine a witness on interrogatories, (on the ground that he is likely to die before the cause can be tried,) until after issue is joined in the action.

J. Brown moved for a rule calling on the defendant to show cause why a commission should not issue to examine a witness who lived within the jurisdiction of the Court, on interrogatories. The grounds on which the rule was prayed were, that the witness was 75 years old, and was afflicted with a complication of diseases, and was not likely to live two months; he resided in the country, and the venue in the action was in Middlesex, and it was sworn that the witness was not in a state to be moved, nor was it likely that he ever would, &c. The only difficulty which existed in the case, which would otherwise be one of every-day practice, was, that issue had not been joined in the cause. The declaration had been delivered, and the defendant had obtained time to plead. It was now submitted that it was not absolutely necessary that issue should be joined before the Court would grant a commission to examine a witness on interrogatories, and, if so, this was a case in which the Court would grant a commission if it had the power; for if this were not done, great injury might accrue to the plaintiff which he could in no way avert.

Patteson, J. I do not see how I possibly can grant this application before issue is joined in the action. Here no plea has been pleaded, and how can it be known what questions to ask of the witness until it is seen what issues are raised by the pleas? If I granted this rule, the practice of the Court would be broken in upon, and which has always been the other way.

Rule refused.

Court of Common Pleas.

Edwards v. *Lawless*. Trinity Term, 1848.

ATTORNEY'S BILL.—ACTION AGAINST PROVISIONAL COMMITTEE-MAN.—DELIVERY OF BILL WITHIN 6 & 7 VICT. C. 73.

The delivery of an attorney's signed bill of costs to a member of a projected railway provisional committee, and not at any public office of the said projected railway company, is not such a delivery within the 6 & 7 Vict. c. 73, to another member of the same committee, as to make the latter liable as defendant in an action for the amount of such bill.

ACTION by the plaintiff, an attorney, against the defendant as a member of the provisional committee of a projected railway company, for work done and professional services rendered on account of such company. The items in the plaintiff's signed bill commenced at a period antecedent to the defendant's becoming a member of the committee, and the delivery of it, as required by the 6 & 7 Vict. c. 73, s. 37, had been made to another and an earlier member of the same provisional committee named Moore, and not at any office of the company. The plaintiff had a verdict for 492*l.* 10*s.*; and pursuant to leave reserved to the defendant at the trial to move to enter a nonsuit on the ground that there had been no sufficient delivery of the plaintiff's signed bill to satisfy the statute, a rule *nisi* for that purpose had been obtained, against which

Humfrey and *Phipson* showed cause.

Whitehurst and *Keane*, contrà.

Wilde, C. J. There has been no sufficient delivery of the bill to satisfy the statute. The case was not to be looked at as one falling within any general rule as to co-contractors. But the particular nature of the concern of which the defendant was a member must be considered. It appeared that Moore came into the undertaking at an earlier period than the defendant, and the bill contained items ante-

cedent to the defendant's joining, and embraced business done in one continuous course of business. The provisional committee, too, was not represented by any known particular member of it. Without, therefore, expressing any general opinion as to how far a delivery to one co-contractor may be good as to all, it was sufficient in the present case to say that, although in one sense Moore might be a co-contractor, still his position was in other respects of that particular nature and description which prevented his being looked upon as authorised to receive the plaintiff's whole bill of costs so as to bind all the individuals who might be charged or chargeable with that bill. The delivery did not answer the requirements of the statute, and the case was distinguishable from the ordinary cases of partnership and co-contractors. The bill ought to be delivered either at a place of business or to some person who might be reasonably considered as representing the provisional committee.

The rest of the Court concurred.

Rule absolute.

Court of Bankruptcy.

In re Cross, Exparte Gibbons. August 26, 1848.

SUFFICIENCY OF PETITIONING CREDITOR'S DEBT. — EFFECT OF FRAUDULENT CONTRACT.

Held, *that a creditor executing a composition deed, and at the same time privately stipulating for an advantage beyond the other creditors, thereby ceased to be a creditor for any sum which would sustain a fiat.*

AN application having been made to Vice-Chancellor Knight Bruce, for an injunction to restrain Gibbons from issuing a fiat against Cross, his Honour declined to grant an injunction, but directed that the alleged bankrupt should be at liberty, in the first instance, to appear by counsel before the Commissioner to whom the fiat should be allotted, and to take any objection he might be advised to the validity of the fiat.

Accordingly, the fiat was issued and allotted to Mr. Commissioner *Fane*, and on the 24th August, Mr. *Glasse* appeared before the learned Commissioner on behalf of the petitioning creditor, and Mr. *Bagley* on behalf of Cross, the alleged bankrupt. The sufficiency of the petitioning creditor's debt was disputed under circumstances which are stated in the judgment. The learned counsel cited *Jackson* v. *Duchaise*, 3 T. R. 551; *Howden* v. *Haigh*, 11 Ad. & El. 1033; *Davidson* v. *M'Gregor*, 8 Mees. & W. 763; and *Fivaz* v. *Nicholls*, 2 Com. B. 501.

Mr. Commissioner *Fane*, after taking time to consider, delivered his judgment as follows :— "The question in this case is, whether there is a sufficient petitioning creditor's debt to enable me to adjudge Cross a bankrupt. Gibbons was a creditor of Cross for 1,600*l.*; Cross had been involved in a lawsuit, which had terminated unfavourably, he being adjudged by an award to pay a large sum to one Waterhouse, and feeling that, under such circumstances, he was unable to meet his engagements, he consulted with Gibbons, and after some negotiation with him, it was agreed that a deed should be prepared for carrying out a composition of 10*s.* in the pound with all Cross's creditors, and that Gibbons should execute it, but that he should secretly have bills for the other 10*s.* payable at distant dates. A deed was accordingly prepared and executed on the 15th June, which began thus :—"To all to whom these presents shall come, we, whose names are hereunto affixed, being creditors of Cross, send greeting," and it then proceeded upon a plan by which it was to operate as a deed of release between Cross and those who might be prevailed upon to execute it; and, accordingly, the deed, after reciting Cross's inability to pay his debts in full, and the willingness of such as might sign it to take 10*s.* in the pound, to be secured by bills drawn and accepted by certain persons, declared that those who signed it, in consideration of bills so drawn and accepted being handed over to them on or before the 22nd of June, had and did discharge Cross of all their demands upon him, provided that if the bills were not handed over on the 22nd, and subsequently paid, the debts should revive. Gibbons was the first to sign the deed, and he did so for 1,600*l.*, having previously got from Cross two bills for 400*l.* each, payable at distant dates, to cover the other 10*s.* in the pound on the 1,600*l.* Afterwards several other creditors signed. Gibbons's main object being to make a good bargain for himself, he thought little of the bills he was to receive for the 10*s.* composition; and therefore, though those bills were not delivered to him on the 22nd, he made no objection on that score, but directed his whole attention to getting additional security for the two bills of 400*l.* each, which Cross had given him. Cross was very willing to give the additional security, if he could, and securities were offered; but, after some negotiation, Gibbons was dissatisfied, and sued out a fiat against Cross; and now the question arises whether, under these circumstances, Gibbons has a sufficient debt to support the fiat. I think he has not. The deed of the 15th of June, when executed by him, destroyed his demand for the 1,600*l.* It is insisted, indeed, that, although the deed was operative between the 15th of June and the 22nd, yet, inasmuch as the bankrupt did not deliver to Gibbons the composition bills on the 22nd, the original debt, pursuant to the proviso, revived; but I am of opinion that it did not. It is a universal rule that a fraudulent deed, though operative *against* the fraudulent party to it, is not operative *for* him, and therefore confers on him no rights whatever; and hence, though the deed of the 15th of June operated so as to bar Gibbons's claim for the 1,600*l.*, it did not operate to give him any right to receive the 800*l.*; and if so, Cross's not giving the

bills for the 800*l.* on the 22nd of June was immaterial. If, however, Cross had been under an obligation to give the bills for 800*l.* Gibbons must be held, under the circumstances of this case, to have waived the strict performance of that obligation, because he continued negotiating with Cross as to the further fulfilment of the whole contract long after the 22nd. But I do not proceed on this ground; I proceed on the ground that all provisions in the deed of the 15th of June in favour of Gibbons were simply void, the whole transaction being a fraud on all the creditors of Cross. It may, at first sight, seem hard that Gibbons should lose everything, the 1,600*l.* and the 800*l.* and the extra advantages for which he stipulated, but it is but another illustration of the old fable of the dog, who, in his eagerness to get the shadow of the meat in the water, lost the substance; nor is the punishment unjust. The fraud of which Gibbons was guilty, that of drawing in other creditors to submit to a loss of 10*s.* in the pound by holding out that he, one of the largest creditors, would submit to a similar loss for the general benefit, and yet secretly stipulating for a payment in full, is a fraud only too common, and it is but just towards the public that those who are guilty of such frauds should, when detected, suffer a loss as great as the unjust gain they sought. If such persons, on being detected, might still rely on the right they openly stipulated for, they would, in case of non-detection, obtain a great gain, and, in case of detection, suffer no loss, which would be of evil example. If they could go still further,—if, alleging that the debtor was *particeps criminis*, and on that ground, insisting that the deed should not operate in his favour, they could fall back on their original demand, the result would be more pernicious still, for it would be to injure all the other creditors, and to make the delinquent's fraud a source of pecuniary advantage to him. In my opinion, Gibbons, in endeavouring to overreach the other creditors, has only overreached himself, for he has ceased to be a creditor of the bankrupt for any sum whatever—not for the 1,600*l.* for he has released that demand—not for the 800*l.* because no right accrues under a fraudulent deed in favour of the fraudulent contractor. I must therefore refuse to adjudicate Cross a bankrupt.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Law of Costs.

ACCUMULATIONS.

Thellusson Act. — When an accumulation is directed by will from the proceeds of real estate, the heir of the testator is entitled to the income of the accumulated fund, from the period that the accumulation is void under the statute until the period of distribution arrives; and takes such income as personal estate. *Semble*, That the costs of suit will come out of the corpus and accumulation within the legal period as one fund, rateably with the subsequent accumulations, as another fund. *Barrett* v. *Buck*, 36 L. O. 391.

ATTACHMENT.

Vesting order.—A party attached for costs is not entitled to apply for his discharge because the party who has issued the writs of attachment proceeds against him for the same debt in the Insolvent Court and obtains a vesting order. *Wenham* v. *Bowman*, 36 L. O. 366.

See *Married Woman.*

CROSS BILL OF DISCOVERY.

General orders.—By the general orders, the costs of a bill of discovery are to be costs in the cause, unless the Court otherwise orders: *Held*, that the Court will not vary the rule merely because the defendant does not make the whole matters of a bill of discovery available. *Robinson* v. *Wall*; *Flight* v. *Robinson*, 10 Beav. 73.

EJECTMENT.

Order for payment of money. — A consent rule in ejectment, whereby, upon a certain event, either party is to pay costs, is an order for the payment of money within the 1 & 2 Vict. c. 110, s. 18; and after the costs are ascertained by the Master's allocatur, execution may issue thereon. *Doe d. Pennington* v. *Barrell*, 4 D. & L. 755.

EXECUTION.

Rule of Court under 1 & 2 Vict. c. 110.—A rule of Court under 1 & 2 Vict. c. 110, for the payment of costs may be enforced under a writ of *ca. sa.*, after the expiration of a year and a day from the time such rule was made without a writ of *sci. fa.*, or special leave of the Court being first obtained. *Spooner* v. *Payne*, 35 L. O. 215.

FRIVOLOUS ACTION.

See *Several Issues.*

HEIR.

Where, in an administration suit, it appears the fund in Court consists of *corpus* and accumulated income, during more than 21 years from testator's death, *quære*, to what extent the income accumulated after the 21 years expired is liable to the costs of the suit, whether the *corpus* and accumulation within 21 years are to bear the costs in exoneration of, or rateably with, the subsequent accumulation. *Barrett* v. *Black*, 36 L. O. 232.

INFANT.

See *Next Friend.*

INJUNCTION.

Filing answer.—A plaintiff filed a bill for an injunction, which was granted, and thus obtained the object of his suit. He moved, before answer, that his costs should be taxed and paid by the defendant, and that the proceedings in the suit should be stayed. The motion was refused, the Court holding that the defendant was entitled to file an answer, if he required it, to raise the question of costs. *Langham* v. *Great Western Railway Company*, 36 L. O. 508.

INTERPLEADER.

Where an execution creditor is made a defendant in an issue under the Interpleader Act, and he is resident out of the jurisdiction, the Court will compel him to give security for costs. *Williams* v. *Crossling*, 4 D. & L. 660.

JUDGE'S CERTIFICATE.

In an action of trespass, the cause of action alleged was driving stakes into the plaintiff's lands. The defendant paid 40*s.* into Court, and that sum the plaintiff accepted and discontinued. The defendant did not remove the stakes, and a notice in writing was served on him, stating, that if he did not remove them a second action would be brought. The defendant, however, continued the stakes in the plaintiff's land, and a second action was accordingly brought. The jury gave less than 40*s.* damages; and it was *held*, that the continuance of the stakes in the plaintiff's land was a trespass after notice, within the 3 & 4 Vict. c. 24, s. 3, and that, therefore, the plaintiff was entitled to full costs.

Held, also, that in order to obtain them, the plaintiff's proper course was to apply to enter a suggestion, and not for a judge's certificate. *Bowyer* v. *Cook*, 4 D. & L. 816.

LEGATEE.

1. *Residue.*—In a suit instituted by a residuary legatee, the assets proved insufficient for the payment of the expenses and the general legacies: *Held*, that the plaintiff was not entitled to his costs as between solicitor and client, except so far as the general estate had been increased by the proceedings. *Wroughton* v. *Colquhoun*, 1 De G. & S. 357.

2. *120th Order of May*, 1845.—The costs incurred by a legatee, who has instituted an administration suit, in attending before the Master by counsel in support of his state of facts: *Held*, not to be within the 120th Order of May, 1845, as incurred upon a question relating to title. *Wroughton* v. *Colquhoun*, 1 De G. & S. 357.

MARRIED WOMAN.

Setting aside attachment.—A married woman not holding herself forth as a single woman, but taken in execution under a writ of attachment issued against her in her maiden name, will be discharged from custody without payment of the costs of the application.

An appearance entered by the plaintiff or relator for her in her maiden name will be set aside.

If her conduct should have been such as to have misled the other side, the costs will be reserved until the hearing. *Attorney-General* v. *Adams and others*, 36 L. O. 229.

MORTGAGOR.

Payment under protest.—As to the legal effect of a payment of a bill of costs "under protest." Mortgagee's solicitor delivered his bill to the mortgagor nearly three weeks before the day of settlement. At the meeting the bill was objected to, but the solicitor refused to complete without full payment, and the mortgagor paid it under protest: *Held*, that this was not sufficient to authorize a taxation, although there might be some overcharges. The taxation of the bill of a mortgagee's solicitor, at the instance of the mortgagor, takes place as between the solicitor and the mortgagee, his client. *Harrison, in re*, 10 Beav. 57.

Case cited in the judgment: In re Wells, 8 Beav. 416.

NEXT FRIEND OF INFANT.

Unsuccessful petition.—The petition of an infant plaintiff in a cause is the petition of his next friend, and the next friend was ordered to pay the costs. *Jones* v. *Lewis*, 1 De G. & S. 245.

PEDIGREE.

See *Trustee*, 1.

PROSECUTION FOR NON-REPAIR OF HIGHWAY.

Judge's Order.—A judge's order for costs of the prosecution of an indictment for non-repair of a highway, under the general Highway Act, 5 & 6 W. 4, c. 50, s. 95, should state on the face of it, out of what funds the costs are to be paid; and where it did not do so, the Court set the order aside.

Semble, that it should also state the amount.

Semble, that, where an indictment is preferred at the Quarter Sessions by order of Special Sessions, and is removed into this Court by the defendants by writ of certiorari, and is then tried at Nisi Prius, the judge sitting there is a "Judge of Assize, before whom the said indictment is tried," within the meaning of the 95th section of the 5 & 6 W. 4, c. 50, so as to be enabled to make an order for payment of the costs of the prosecution. Where the order was made to pay the costs to "*G. H. A.*," (the prosecutor,) "or his attorney, *Semble*, that the order was not bad, because *G. H. A.*" was dead at the time of the order made. *Semble*, that it need not appear by express averment, if it may be gathered by reasonable implication that the highway in respect of which the indictment is preferred, is within the division for which the justices in Special Sessions were sitting who ordered the indictment to be preferred. *Semble*, that it is not necessary that the judge should state on the face of the order, the facts out of which his jurisdiction arises. *Reg.* v. *Inhabitants of Watford*, 4 D. & L. 593.

RELATOR.

Advertisement without sanction of Master.—A charity scheme was directed. The relator, without the sanction of the Master, advertised and incurred expense in obtaining information. The Court refused to allow the ordinary costs, but, on the ground of its having proved useful to the charity, allowed the money out of pocket *bonâ fide* expended. *Attorney-General* v. *Ironmongers' Company*, 10 Beav. 194.

RETAINER OF SOLICITOR.

Taxation on application of two out of three clients.—Taxing Master's jurisdiction.—Retainer.—A solicitor was employed by three partners. He brought an action against them for his bill of costs, and representing one, he obtained judgment against him by default: *Held*, that this did not prevent the others from obtaining an order for taxation: *Held* also, that an application for taxation by the two, was regular, the third not concurring, but that he ought to be served with the petition.

The taxing Masters have jurisdiction to determine questions of retainer. *Hair, in re*, 10 Beav. 187.

REVIEW OF TAXATION.

Master's discretion.—This Court will not rescind an order of a learned judge that a Master review his taxation, upon the showing that such taxation was not erroneous.

Nor will this Court interfere with the Master's discretion in matters of taxation, so long as it is exercised reasonably. *Chilton* v. *London and Croydon Railway Company*, 36 L. O. 430.

SCHEDULES AND ATTENDANCES.

Principles on which bills are taxed.—A solicitor in carrying in a state of facts to obtain the Master's approval of a contract to purchase, appended a long schedule thereto of the parcels proposed to be purchased. The taxing Master disallowed the charge for drawing, and only allowed for copying such schedule: *Held*, that such disallowing was proper, although the Master in ordinary had allowed attendance upon a number of warrants, proportioned to the length of the state of facts, including the schedule: *Held* also, that the allowances in respect of these attendances were properly considered by the taxing Master as a compensation for other business actually transacted, and in respect of which he disallowed the charges. *Jones* v. *Lewis*, 1 De G. & S. 245.

SECURITY FOR COSTS.

Dismissal on default.—A plaintiff having been ordered to give security for costs, gave an insufficient security; he was ordered to give other security within a month, and having made default, he was ordered to give security within a limited period, and in default, that the bill should stand dismissed with costs. *Giddings* v. *Giddings*, 10 Beav. 29.

SEVERAL ISSUES.

Frivolous action.—*4 & 5 Anne, c. 16, ss. 4, 5; 3 & 4 Vict. c. 24.*—To a count of trespass *qu. cl. fr.* upon three closes—the defendant pleaded several pleas; the plaintiff new assigned trespasses *extra viam* as to the third close, to which the defendant pleaded not guilty. The defendant had a verdict upon some of the issues with respect to the first and second closes, and the plaintiff upon others, so that the defendant succeeded as to the causes of action in those closes—the plaintiff had a verdict, with one farthing damages upon the new assignment. There was no certificate under 3 & 4 Vict. c. 24: *Held*, that the causes of action in that count were divisible; and that under the 4 & 5 Anne, c. 16, ss. 4, 5, the plaintiff was entitled to the costs of the issues found for him, with respect to the causes of action in the first and second closes; but that he was deprived of all costs by 3 & 4 Vict. c. 24, with respect to the cause of action for trespasses in the third close. By the one statute the defendant is punished for pleading pleas which he cannot support; and by the other, the plaintiff is punished for bringing a frivolous action, in which he succeeds. *Sharland* v. *Loaring*, 1 Exch. R. 375.

Cases cited in the judgment: Newton v. Rowe, 1 C. B. 187; Doe d. Bowman, v. Lewis, 13 M. & W. 249; Cox v. Thomason, 2 C. & J. 498; Richmond v. Johnson, 7 East, 583.

TAXATION.

1. *Suppression of facts.*—*A.* agreed to take a lease and to pay the expenses. The lease was prepared by the lessor's solicitor, who delivered his bill, made out as against the lessee. The lessee obtained an order to tax the bill, on an allegation that he, the lessee, had employed the solicitor, which being contrary to the fact, the order was discharged, but without costs, the matter in difference being very small. *Gabriel, in re*, 10 Beav. 45.

2. *Solicitor and client.—Protest.*—The bill of trustee's solicitor was delivered on the 27th of November, and on the 10th of December, paid, after some deductions, by the solicitor of the *cestui que trust*, as he alleged, under protest. A petition for taxation, presented by the *cestui que trust* in January following, was dismissed with costs.

The general rule is, that a paid bill is not to be referred for taxation; and special circumstances and grounds are required to take a case out of this rule. *Neate, in re*, 10 Beav. 181.

3. *Taxation after twelvemonths.*—*A.* was the solicitor employed by a railway company to obtain their act: he employed *B.*, another solicitor, to collect evidence. In November, 1846, *A.* delivered his bill of costs, not including *B.*'s charges. The company refused to consider the bill till these charges were included. In December, 1847, *A.* brought an action for his costs, and the company, in January following, presented a petition for taxation. The Court *held*, that the petitioners, under the circumstances, were entitled to have the bill taxed, though a twelvemonth had elapsed from its

delivery. *In re Bagshawe and others*, 36 L. O. 472.

See *Retainer; Review of Taxation; Schedules.*

TRUST FUND.

The costs of a petition of a tenant for life of a fund cannot be paid out of the capital, the petition not being served on the parties entitled in remainder. *Exparte Fletcher, in the matter of the Trustee Act*, 10 & 11 *Vict. c.* 96, 36 L. O. 271.

TRUSTEES.

1. *Disputed pedigree.*—It appearing that the evidence of heirship was, previously to the institution of a suit, submitted to the defendants, the trustees, and was such as they ought to have been satisfied with, the Court gave the plaintiff the costs of the suit as against the trustees, including the expenses of the genealogical evidence. *Lancashire* v. *Lancashire*, 1 De G. & S. 288.

2. *Refusal to concur.*—One of two trustees of a settlement, having refused to concur with his co-trustee in the transfer of the funds, the subject of the settlement, to the parties entitled, the Court considering his refusal to be unreasonable, ordered him to pay the costs of the suit thereby rendered necessary. *Firmin* v. *Pulham*, 36 L. O. 231.

VENDOR AND PURCHASER.

A purchase was completed under the powers of an act of parliament, which authorized a corporation to purchase property compulsorily. The vendors being under disabilities, the purchase-money of their property was paid into Court, under the provisions of the act whereby the Court was authorized to order all the reasonable costs, charges, and expenses attending the re-investment of the purchase-monies in the purchase of lands, to be settled to the same uses as the property purchased, together with the costs, charges, and expenses of obtaining the proper orders, and of the other proceedings for such purposes, to be paid by the corporation. A contract was entered into for the investment of part of the fund in Court in the purchase of certain property free from incumbrances. The title, on investigation, proved to be subject to numerous incumbrances, and the purchaser's counsel advised that the vendors should procure all the incumbrances to be conveyed to the vendors, so as to shorten the conveyance. The draft reconveyances, eight in number, were submitted to the purchaser's solicitors, and settled by their counsel: *Held*, that the incorporation could not be charged with the costs thereby incurred, unless they were incurred with the express consent of the corporation. *Jones* v. *Lewis*, 1 De G. & S. 245.

BUSINESS OF THE COURTS.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER TRINITY TERM, 1848.

Queen's Bench.

Middlesex.

R. Sydney	Cahill	S. J.	Macdonald (stayed)	Dt. Bolton
Johnson, Son, and W.	Rowe		Cope (stayed)	Prom. Chester
S. B. Hamer	Davies	S. J.	Wilkinson (stayed)	Prom. Howard
M. Fraser	Williams	S. J.	Whiteway (inj.)	Prom. Mardon and P.
Adlington and Co.	Bastone		Ross (inj.)	Dt. Chadwick
Elderton and H.	Fiddes	S. J.	Wm. Toogood (inj.)	Prom. Campbell and A.
Johnson, Son, and W.	Crowther, admix., &c.	(inj.)	Edwards and another, surviving executors	Dt. Williamson
Becke	Becke		Parish and another	Dt. Helme
Jno. Lewis	Moon (stayed)		Connop	Pro. Lewis
Thomas M. Parker	Clerk (inj.)	S. J.	Hughes	Pro. Burrell
Ablett	Neal		Ward (inj.)	Pro. Carlon and H.
Oliverson and Co.	Doe d. Peacock	S. J.	Frere	Eject. Vizard and Co.
Everest and Co.	Clutterbuck		Carter (inj.)	Pro. Bell
Wontner	The Queen		Johnson and others	Indt. E. Lewis
Wm. Day	Dawson	S. J.	Macken	Pro. Wright and Co.
Ravenscroft	Leatham		Simmonds and another	Ca. Hoppe and B.
Potter and Co.	James	S. J.	Llewellyn	Dt. Tatham and Co.
Weeks	James	S. J.	Wilson	Austen
Hill and H.	The Queen	S. J.	Smith and others	Sci. fa. Oliverson and Co.
H. E. Brown	Frail	S. J.	Dixon, Esq.	Fearon and Co.
Kirk	Daubney	S. J.	Phipps, Esq.	Weller
J. Strutt	Parratt	S. J.	Elrington	Pro. Oldershaw
Solrs. Treasury	The Queen	S. J.	Wm. Hunter	Indt. Bennett
Same	Same	S. J.	Same	Indt. Same
Pittman	Rowcliffe	S. J.	Gregory	Tres. W. Williams
Person	Coppock	S. J.	Lander	Ca. Webb

Boulton	Shaw and others	S. J.	Elderton	Dt. Person
Ivimey	Dowling	S. J.	Becke	Pro. Blake and Co.
Walker and Co.	Doe d. Conant & ors.	S. J.	Warner	Ejt. Robinson
Bickley	Baldwin	S. J.	Padwick & another	Ca. Espin
H. Walker	Morrell and another	S. J.	Woolten and another	Proms. Gauntlett
Few & Co.	Mousley	S. J.	Stanley Br.	Dt. Cox and W.
Hodgson and B.	Prosser, jun.	S. J.	Swinton	Pro. Peddell
Same	Gregory and wife	S. J.	Clark	Dt. Gray and B.
Young and Son	Doe d. Brown		Newport	Ejt. Wells
E. J. H. and J. Lawford	The Queen	S. J.	Kendall and four others	Ind. Kendall, In person; Binckes, G. Beckley; Lunley, Lewis; Bickley, In person; Moore, Bower & Son
Kennedy	Martyr	S. J.	Isaacson	Ca. Jones and Co.
Murray	Dickinson	S. J.	Benjamin	F. Issue, J. A. Jones
Lawford	The Queen	S. J.	Kendall and others	Bower & Son, for deft. Moore
G. S. Ford	Howard	S. J.	Griffin	Issue, Horwood and G.
W. M. Webster	Hudson	S. J.	Twigg, (P. O.,) &c.	Asst. Sharpe and Co.
Same	Same	S. J.	Same	Asst. Same
Same	Hill and another	S. J.	Same	Asst. Same
Pilleau	Nairne	S. J.	Walker	Pro. Bolton and Co.
Jos. Row	The Queen	S. J.	Turner	Indt. Hinde and P.
Kingdon and S.	Carpenter		Bowen	Dt. Young and Son
Govett	Abbott	S. J.	Hamilton	Tres. Stevens and G.
C. Pain	Turrill	S. J.	Ditchburn	Pro. Ashurst and Son
Amory and Co.	Taylor (P. O. &c.)	S. J.	Pocock	Pro. Pocock and P.
Everill	Graham, sued, &c.	S. J.	Hanmer	Asst. Church and L.
Coombe	Westwood and others		Sims	Pro. Watson and Sons
Brandon	Dumeste (a pauper)	S. J.	Bishop and another	Pro. Chas. Berkeley
Parker	Clerk		Mollady	Pro. Pittindreigh and S.
Walker, G. and Co.	Doe d. Conant and others		Kloss	Ejt. Engleheart
Coode and Co.	Walsh and another	S. J.	Morrison	Pro. Beavan and G.
Same	Thompson	S. J.	Morrison	Pro. Same
Beddome and W.	Bouverie and others		Donaldson and others	Tatham and Co.
Walker and G.	Williams and others		Hutchinson	Pro. Sharpe and Co.
Dolman and S.	Neeves		Burrage	Pro. Cooper
G. Brown	Mackley		Winter	Covt. Norton
Field	Blane		Procter	Pro. Miller and C.
Chas. Dod	Jobson		Churton	Tres. J. M. Cooper
In person	Gridley		Austen	Dt. Robson
Keene	Worthington		Hall	Ca. Bicknell
Hodgson and B.	Whitfield and anor.	S. J.	Beale	Dt. Appleby
Coode and Co.	Morcom	S. J.	The Governors and Company of Copper Miners in England	Pro. Tilson and Co.
T. Sharp	Thompson		Bush, extrix., &c.	Pro. Bush and M.
T. F. Miller	Tucker, admix.	S. J.	Chaplin and another	Ca. Morphett
Freeman	Freeman (pauper)		Rosher	Tres. Gedge
O. Richards	England		Knott	Dt. Wright and K.
Same	Edwards		Leahy	Pro. Beevan and G.
Wyche	Flocton and others	S. J.	Melladew and others	Ca. G. Fry
Sutcliffe	Foster	S. J.	Lord Loftus	Covt. Lethbridge and M.
Same	Swindall	S. J.	Dawson	Covt. Lewin
Ashley	Osterman		Bateman	Ca. C. Pearson
W. Sim	Blacktop		Skinner	Dt. In person
Sutcliffe	Foster	S. J.	Dawson	Covt. Lewin
Same	Swindall	S. J.	Lord Loftus	Covt. Lethbridge
Thos. Binns	Foulkes		Wilder	Pro. Oldershaw and M.
Nixon	Ghislin		Gregory and another	Tres. Hodgson and B.
Dalston	Baillie		Peacock	Pro. Younghusband
Currie, W. and W.	The Queen	S. J.	The Marquis of Chandos	Indt. Espin
B. Hope	Hoare a (pauper)		Coupland	Ca. Walker
C. Fiddey	Jeffs and wife	S. J.	The Midland Railway Co.	Ca. Parker and Co.
J. Curling	The Queen		Barber	Indt. Coppock
Coppock	Chisholme		Lord	Pro. Clowes and W.
Wordsworth and D.	Doe dem. Figg and anor.		Potter	Ejt. Macphail
Sidney and S.	Hancock		Edwards and others	Tres. Carpenter — Scarman
Lander	Brown		Lord Albert Conyngham	Pro. Palmer and F.
Tucker and S.	Doe dem. Hall		Nairn	Ejt. Robson
Blower and Co.	Peter, administratrix (a pauper)	S. J.	Kent	Dt. Kent
Rowlatt	Goodman	S. J.	Pocock	Pro. H. H. Pool

Wing and Du Cane	The Dublin and Belfast Junction Railway Company	S. J.	Lewis	Dt. Gregory and Co.
Same	Same		Cheveley	Dt. Greenwood
Same	Same		Same	Dt. Same
Bliss	Gadsby		Estall	Ca. Holt
T. A. Jones	Battersby		Russell	Ca. Campbell and W.
Hodgson and B.	Gregory and ux. admix., &c.		Fitzgerald	Dt. Roscoe
Vallance and V.	Hooper	S. J.	Johnson and others	Dt. In person
A. Robinson	Allen		Alexander	Intn. Lewis
In person	Colombine	S. J.	Penhall and another	Pro. Sandys
Du Pasquier	Humby		Taft	Covt. Rickards and W.
Thomas	Hankinson and another, exors.		Alcock	Dt. Bird
Wright	The Queen	S. J.	Powell	Indt. Thompson and P.
G. Gee	Williams		Slim	Pro. Atkinson
Wing and Du Cane	The Dublin and Belfast Junction Railway Company		Howard	Dt. Few and Co.
Dawes	The Queen	S. J.	Fontainemoreau	Indt. Hobler
Wiglesworth and Co.	Muggeridge and another		Bolton and another	Dt. L. Levy
H. B. Roberts	Fuller		Fuller	Dt. Bell
Cookney	Thomson	S. J.	Amsinck	Dt. Johnstone, E. and L.
Same	Horner	S. J.	Same	Dt. Same
Price and B.	Davies, exor. &c.		Evans	Dt. John Williams
R. C. Barton	Doe dem. Burgess and another		Webb	Ejt. J. C. Grant
Chubb	Edwards (a pauper)		Stiff	Bartley and S.
Macphail	Transfield (a pauper)		Okey and others	Orchard
Willoughby and J.	Doe dem. Matthew & ors.		Castell	Ejt. G. Bickley
G. J. Shaw	Archer	S. J.	Frances	Ca. Clarke, F., and F.
Dyer and Q.	Doe dem. Powell		Willmott	Tres. and Ejt. Smith & Son
White, B. and Co.	Tylee	S. J.	Mayne	Tres. Capes and S.
Towsey	Smith		Ashby	Pro. Monkhouse
R. C. Barton	Smith		Scoles	Dt. Greatorex
G. Bickley	Rough and another		Norris	Dt. Pryer
R. K. Lane	Chapman		Speller	Pro. Boulton
Mortimer	Doe dem. Parker and ors.		Constable	Thos. Kirk
Kearns	Wood		Elliotson	Pro. Smith and Son
F. W. and S. Haines	Doe dem. Earl Craven and another		Zaehnsdorf	Ejt. In person
Dickson and O.	Cannan and others assignees, &c.		Rochester and another	Dt. Dixon
Same	Myers		Coxhead	Pro. Ivimey
Beddome and Co.	Hedley		Dover	Pro. J. H. F. Lewis
N. J. Giles	Giles and others		Pym	Covt. Fyson and Co.
Kinder	Ryan		Clark and another	Tres. Smedley and R.—Canham in person
W. Smith	Doe dem. Bratt		Carr	Ejt. C. F. Chubb
Delamare	Satterthwaite		Hateley	Ca. Hammond
Humphrys	The Queen		Walker and another	Indt. Watson, B., & Son
Sandys	Vivian and others		Vigers	Pro. Gregory and Co.
Bigland	Rainsley		Jermingham	Dt. Douglas
	The Queen		Campbell	Indt. In person
Rawlins	Pilcher		Pattinson	Pro. Roberts
S. J. Sydney	Nathan		Story (sued, &c.) and anr.	Tres. T. Blake
Yallop	Kymer	S. J.	De Winton and others	Ca. Jno. Williams
Sharp and J.	Doe dem. Stout		Kerschner	Ejt. Swan
Warneford	The Duke of Brunswick and Luneburgh	S. J.	Harmer	Ca. A. R. Steele
G. Stephens	Doe dem Sweatman and others		Scott	Ejt. Bassett
E. Starling	Glover		Chesterman and another	Dt. E. Rye
Shaw and B.	Hadley		Von Rathen	Pro. Burbidge
Willis	Allanby and others		Tomkins	Ca. J. and W. Vallance
Smedley and R.	Harris and others		Hallett	Pro. Kirk
W. S. Paterson	Davies		Little	Dt. H. T. Archer
Elderton	Cameron, Coalbrook Steam, Coal, and Swansea and Loughor Railway Co.		M'Adam	Dt. Rowland and Co.
Same	Same		R. K. M'Adam	Dt. Same
Lee	Flanagan		Mead	Tres. Vaughan, Rushbury
Lewis and C.	Smith		Fryer	Currie and W.
Same	Beverley		Ibbetson, Bt.	

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 18, 1848.

"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

SOUTHWARK CORPORATE COURT OF RECORD.

COUNTY AND PALACE COURTS.

THERE is an ancient Court of Record in the borough of Southwark, the style of which is "The Court of Record of the Liberty of the Mayor and Commonalty and Citizens of London of their Town and Borough of Southwark," in the constitution of which some recent alterations have been made, not undeserving the attention of the profession.

This Court, the jurisdiction of which has no limit as regards amount, is held under a charter granted by Edward the 6th to the city of London, although there are charters in existence from which it might be contended that the Court has a more ancient origin.[a] By the charter of Edward the 6th, which is to be found in what the city antiquarians term "The Grand Inspeximus Charter of Charles the 2nd," in addition to a very extensive property in the borough, together with the manor and all manorial rights over it, it further grants the franchise of a civil jurisdiction the same as is exercised in the city Courts, to be holden by like actions, bills, plaints, process, arrests, judgments, and executions, before the lord mayor, alderman, and sheriffs, at the Guildhall, and in like manner and form as all such suits are prosecuted in the city, with power to empanel and enforce the attendance of jurymen from the borough, to try issues arising, and also the cognizance of all pleas personal, to be held in the same Courts and tried by the same jurymen summoned from the borough.[b] The jurisdiction thus granted has been for some centuries exercised in a Court sitting, not at the Guildhall in London, but at a Guildhall

[a] There is a charter of Edward the 3rd, reciting a petition of the citizens to the king in parliament, complaining that malefactors escaped into the village of Southwark out of the jurisdiction of the City, and praying that such village may be granted to them. This charter, with the consent of parliament, grants the village at a fee farm rent of 10*l.* per annum, (*Strype's Stow*, vol. 2, page 2;) but it would seem all that was intended by this grant of Southwark was the bailiff's jurisdiction over it, which at this time was in most respects merely ministerial. The judicial and seignorial rights, though contended for, do not seem to have been granted until the time of Edward the 4th, who by his first charter, grants the borough of Southwark, in language professedly calculated to remove all doubts regarding the civic jurisdiction of that district. It refers to the grant made by the charter of Edward the 3rd, and to "divers doubts, opinions, varieties, ambiguities, controversies and dissensions," which had arisen with regard to the exercise of the franchise thereby granted, for removing of which for ever, it grants many privileges and franchises in detail, and generally "all manner of liberties, privileges, franchises, acquittals, customs and rights whatsoever, although not expressly mentioned, as the king himself had a right to when the town was in his hands." &c.

[b] Norton's Commentaries on the History and Franchises of London, book 2, page 501.

held in Southwark, and the Recorder of London, as Steward of Southwark, has been the presiding judge. For some reasons, which it is very immaterial at present to inquire into, the jurisdiction of the Borough Court of Record, in respect of actions of debt, has of late years been but little resorted to. The operation of the County Courts Act, (9 & 10 Vict. c. 95,) which practically deprives suitors of the advantage of professional assistance, by reducing the scale of remuneration to a point which renders it impossible for competent professional men to afford their assistance to suitors, probably suggested the idea of reviving and re-constructing the Southwark Court of Record, and rendering it an available tribunal for the recovery of small debts.

As we have already had occasion to observe,[c] the Palace Court, which has a jurisdiction substantially resembling that which may be exercised in the Southwark Court of Record, under the charter of Edward the 6th, has had a considerable augmentation of business since the County Courts Act came into operation. The course of procedure under the County Courts Act, the amount of the Court fees, and the ludicrously inadequate remuneration granted to professional men practising in those Courts, with other causes frequently adverted to in this publication, have rendered these tribunals, in many instances, extremely unpopular, and induced suitors gladly to avail themselves of an opportunity of resorting to any other Court for the recovery of small debts, a suit in which would not be followed by the deprivation of costs, which the County Courts Act imposes as a penalty on those who prefer the Superior Courts at Westminster to the County Courts, in actions in which the latter have jurisdiction.[d]

It may be safely predicated that the flow of business to the Palace Court would be extensively increased, and the suitors within its local jurisdiction, availing themselves of its advantages, considerably multiplied, if it were not that the number of practitioners is unfortunately restricted,[e] and in this, as in every other case, the public is dissatisfied unless it can command—that to which it is assuredly entitled—the liberty of selecting from the whole body of counsel and attorneys. With the experience of the results in the Palace Court, and the feeling excited by the monopoly existing there, we learn with equal surprise and regret, that the learned Recorder of London, whilst desiring to improve the constitution of the Borough Court, so as to render it useful to the inhabitants of that important and populous portion of the metropolis, still declines to throw open the practice to the profession generally. Instead of the two or three counsel and attorneys who were nominated to the Court—we cannot say practised in it, for there could hardly be said to be any practice—the learned judge now proposes, we understand, to invite a limited number of attorneys, resident in the district, and eight or nine barristers, who have been already selected to conduct the business of the Court.

This arrangement, although it may be admitted to be an improvement on the more restricted system which it is intended to subvert, is still unfair and objectionable in many respects. If it be meant really to rescue this ancient and valuable jurisdiction from decay, let the door be thrown open to all the members of the profession who are eligible to practice in the Superior Courts at Westminster. If, from choice or connection, individual members should deem it expedient to select the Southwark Record Court as the peculiar sphere of their professional exertion, neither the public nor the profession could justly complain of such an arrangement; but there is no good reason why a person desiring to sue or being sued in the Borough Court, should be compelled to seek counsel and assistance from strangers, instead of resorting to those who have already acquired his confidence and respect, and are eligible to practise in the highest Courts of justice.

We have already protested against the operation of this system as displayed in a monopoly of much greater magnitude—the Ecclesiastical Courts. The principle is equally objectionable when applied to a limited jurisdiction like that of the Borough Court of Record. We trust the matter will be reconsidered, and finally decided with a view to the public interest: in this event, a field will be opened in some degree worthy of the learned Recorder's acknowledged judicial ability and experience.

An application is about to be made on the part of an attorney of the Superior Courts, for admission on the Roll of the Palace Court, under the 6 & 7 Vict. c. 73, s. 27.

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[c] Vol. 35, p. 142.

[d] 9 & 10 Vict. c. 95, s. 129.

[e] Four barristers and six attorneys have the exclusive right of practising in the Palace Court.

COURT FOR THE DETERMINATION OF RESERVED CRIMINAL CASES.

The Court established by the act of last Session, (11 & 12 Vict. c. 78,) held its first sitting in the Exchequer Chamber, on Saturday last, and, as already announced, consisted of the Lord Chief Baron, Mr. Justice Patteson, Mr. Justice Maule, Mr. Justice Cresswell, and Mr. Justice Erle. It was inconveniently crowded by the junior members of the Bar, who seemed to have supposed that something resembling an inaugural address would have been delivered, or, at all events, that the judges would have adverted to the mode of procedure and the rules of practice which it was proposed to adopt in disposing of the business coming under the consideration of this new tribunal. Nothing of this kind, however, occurred, and no reference was made from the Bench to the fact that the Court sat without any registrar or other officer—without any of the machinery, in short, of a Court of Justice, or any rules for the guidance of practitioners.

Two cases, one reserved by Mr. Justice Patteson, and the other by the learned Recorder of Birmingham, (Mr. M. D. Hill,) were brought before the Court. In the first case there was a counsel for the prisoner, and no counsel for the prosecution. In the second instance there were two counsel for the prosecution, but no counsel for the prisoner.

The only point of importance decided was one suggested by the learned Recorder of Birmingham in the case transmitted by him. As the act in its terms only confers the power of reserving questions of law arising on criminal trials to the Judges and Commissioners of Oyer or Terminer and Gaol Delivery, and the Justices at Quarter Sessions, the Recorder of Birmingham doubted whether he had any power to reserve questions of law for the decision of this Court and respectfully intimated this doubt in the case transmitted by him. No formal judgment was pronounced upon the point, but Mr. Justice Patteson may be supposed to have disposed of it parenthetically by the observation, that every recorder was *virtute officii* a justice.

It has been suggested that the Court on Saturday last was not properly constituted, as only one member of the Court of Exchequer was present, and the third section of the act 11 & 12 Vict. c. 78, which relates to the constitution of the Court, seems to require the attendance of one of the Barons, as well as the Chief of the Court. Our readers will be able to appreciate the weight to which this objection is entitled, by referring to the 3rd section of the act, printed *ante*, vol. 36, p. 404.

THE BAR AND THE ATTORNEYS.

COMPULSORY REFERENCES AT THE ASSIZES.

To the Editor of the Legal Observer.

Sir,—The Report of the Liverpool Law Society, published in your last number, calls attention to a question of much importance, affecting the relative rights and province of the two branches of the profession, and one which, it appears to me, demands prompt consideration by the Incorporated Law Society and the Metropolitan and Provincial Law Association, namely,—"The prevalent practice of counsel on the Circuit urging causes into arbitration, and this very often against the express instructions of the attorney employing them, and sometimes against the express wish of the attorneys on both sides."

That this practice exists is too well known, and the questions, therefore, for our consideration are—

1st. To what causes is it to be ascribed?

2nd. Has the Bar a right to adopt this course?

3rd. (That right being denied,) what is the remedy for the evil?

1. Now, in the first place, it would be generally admitted that some causes brought into Court are really more fit for reference, and that it is not improper for counsel in such cases to represent this to their clients; but the practice of urging references has been indiscriminately extended to causes not falling within that class. It will have been observed that the gentlemen of the Bar most in fault are the leaders on Circuit—those who enjoy the great mass of the business; and this suggests the answer to our first inquiry. The fact is, some of the leaders are so overloaded with briefs that their physical strength becomes well-nigh exhausted, and they therefore, without much regard to the nature of the cause, (except its probable duration and the effort it would require,) seek to relieve themselves of its distressing pressure.

2. As to the right of counsel to persist on the reference of a cause against the wish of the attorney.—The prevailing opinion

has certainly always been that the latter has a full and absolute discretion in this matter, and it would indeed be alike inconsistent with the independence and proper position of the attorney and the interests and liberty of the public, if a contrary doctrine should be established. The Liverpool Law Society, I think, rightly holds "that the attorney is the fittest party to judge of the propriety of a reference, and that counsel ought not to interfere further than by giving advice or suggesting a reference to the attorney; but not to the judge."

If a reference is urged by counsel in open Court, it never fails to be eagerly seconded by the overworked judge, and few attorneys have the moral courage to continue a resistance under such circumstances, however strong their own opinion may be against the propriety of a reference.

3. As to the remedy. An over pressure of business has been shown to be the main cause of the practice complained of. The obvious mode of counteracting this is to distribute that pressure over a greater surface. And further, it seems desirable that the attorneys should come to a determination in future to insist with respectful firmness on all causes being tried which they think should be. But the application of a remedy is a matter peculiarly for the consideration of the two great Law Associations.

It appears to me that at a time when the attorneys are making anxious efforts to secure to themselves an independent and honourable position in society, one of their first steps should be the definite ascertainment of the relative provinces of the two branches of the profession itself.

W.

14*th Nov.* 1848.

THE PETTY BAG OFFICE ACT.

HAVING in the last number (p. 24, *ante*) stated several of the important clauses of the act, 11 and 12 Vict. c. 94, with an analysis of the others, we now add more at length the sections which relate to the *new practice* at this office.

Writs tested in term or vacation. — That every writ of any description whatsoever hereafter to be issued out of the said office of the Petty Bag shall or may be issued or tested on any day, not being a Sunday, Good Friday, or Christmas Day, whether such day shall be in term-time or in vacation; and every such writ so issued or tested on any day in vacation, and which, according to any present law or usage or practice of or in the said Court of Chancery, ought to be tested on some day in term-time, shall be of the like validity, force, and effect as if the day of the issuing or testing of such writ was actually a day in term-time. S. 22.

Writs returnable in term or vacation. — That every writ of any description whatsoever hereafter to be issued out of the said office of the Petty Bag, whether the same shall or may be returnable in the same Court or in any other of her Majesty's Superior Courts of Common Law, shall or may be made returnable and returned on any day certain to be in such writ mentioned (not being a Sunday, Good Friday, or Christmas Day), whether such day shall be in term-time or in vacation, or forthwith after the execution thereof; and every such writ which shall be made returnable or returned on any day in vacation, and which, according to any present law or usage or practice of or in the said office of the Petty Bag, ought to be made returnable or to be returned on some day in term-time, shall be of the like validity, force, and effect as if the day upon which the same writ shall or may be returned or made returnable was actually a day in term-time: Provided always, that in every case in which any particular period of time ought to elapse between the teste and return of any writ, such writ, if made returnable forthwith after the execution thereof, shall be returned immediately after the execution thereof, and after such period shall have elapsed. S. 23.

Proceedings in either term or vacation. — That every rule, order, pleading, judgment, execution, proceeding, act, business, matter, and thing to be made, entered, intituled, filed, given, issued, taken, transacted, done, or performed in or by the said Court of Chancery at any time after the said 1st day of Jan. 1849, shall or may be so made, taken, transacted, done, or performed on any day, not being a Sunday, Good Friday, or Christmas Day, whether such day shall be in term-time or in vacation; and every such rule, order, pleading, judgment, execution, proceeding, act, business, matter, and thing as aforesaid, which shall be so made, entered, intituled, filed, given, issued, taken, transacted, done, or performed in vacation, or on any day in term-time or in vacation, and which, according to the present law, or any present practice or usage of the said office of the Petty Bag, can or ought only to be made, entered, intituled, filed, given, issued, taken, transacted, done, or performed in term-time, or as in term-time, or as on any or some particular day or days in term-time, shall be of the like validity, force, and effect as if the day upon which the same shall or may be so made, entered, intituled, filed, given, issued, taken, transacted, done, or performed, was actually a day in term-time, and as if the same was actually made, entered, intituled, filed, given, issued, taken, transacted, done, or performed in term-time, and not in vacation, and the day or one of the days in term-time required by any such law, practice, or usage as aforesaid. S. 24.

Scire facias may be directed to sheriff of

any county.—That any writ of *scire facias* for repealing, cancelling, or vacating any letters patent or charter, which shall or may at any time hereafter be issued in any action at the suit of her Majesty, hereafter to be commenced, whether at the instance of any of her Majesty's subjects or otherwise, shall or may be directed and sent to the sheriff of any county in England or Wales, although the record upon which such writ shall be founded or issued may be or remain in the county of Middlesex or any other county, and that it shall not be necessary that any such writ which at any time hereafter may be issued and directed to the sheriff of any such county as aforesaid shall be a *testatum* writ, or founded upon any previous writ directed or sent to the sheriff of Middlesex or any other county. S. 25.

Prosecutor's names to be inserted in writ of scire facias.—That in every action of *scire facias* hereafter to be commenced at the instance of any person, being one of her Majesty's subjects, for the purpose of repealing, cancelling, or vacating any letters patent or charter, the name and addition of such person shall be inserted in the writ for commencing such action as the person suggesting or informing her Majesty of the matters or reasons for which such letters patent or charter may be sought to be repealed, and such person shall be and be deemed to be the prosecutor of such action and writ; and the name and address of the said prosecutor's attorney (if any) shall be indorsed upon the same writ, and upon all pleadings (if any) in the action: Provided always, that nothing in this act contained shall authorize the issuing of any such writ of *scire facias* aforesaid without the fiat or leave of her Majesty's Attorney-General. S. 26.

Declarations, &c., in scire facias to be delivered. 5 & 6 *W.* 4, *c.* 83.—That in case any defendant in any such action of *scire facias* already or hereafter to be commenced for repealing, cancelling, or vacating any letters patent or charter shall appear in the said Court of Chancery in person or by attorney to answer the writ issued in such action, it shall not be necessary to file any declaration, but the prosecutor of such action or his attorney shall deliver the declaration to such defendant or his attorney, and shall also at the same time deliver to such defendant or his attorney the notice of objections (if any) required by the provisions of an act passed in the 5 & 6 W. 4, c. 83, intituled "An Act to amend the Law touching Letters Patent for Inventions," and it shall not be necessary at any time hereafter to file any notice of objections required by the said last-mentioned act, but only to deliver the same to the defendant or his attorney, as required by this act. S. 27.

Pleas in scire facias to be delivered.—That in any such action of *scire facias* as aforesaid no demurrer, nor any plea or pleading subsequent to the declaration, shall be filed in the said office of the Petty Bag or otherwise in the said Court of Chancery; and that in every such action, every such plea and subsequent pleading shall be delivered by the party pleading it or his attorney to the opposite party or his attorney, and that the issue in any such action shall be delivered only, and not filed, and shall or may be made up and delivered by either party or his attorney to the opposite party or his attorney; and for the purposes of this enactment, and also for the purposes of managing and conducting every such action of *scire facias* as may contain the name of any prosecutor, such prosecutor shall be deemed to be a party thereto, and to represent the plaintiff therein, subject nevertheless to the control of her Majesty's Attorney-General, in like manner as if this act had not been passed. S. 28.

Issues in scire facias may be tried in any of the Superior Courts.—That in case any issue respecting any matter of fact to be tried by the country has at any time heretofore been or shall at any time hereafter be joined between her Majesty and any patentee or other person in any action of *scire facias* heretofore or hereafter to be commenced, for the purpose of cancelling, repealing, or vacating any letters patent or charter, or recognizance, then and in every such case the record shall be made up and filed in the office of the Petty Bag; and it shall and may be lawful to try such issue in fact in any one of the three Courts of Queen's Bench, Common Pleas, or Exchequer of Pleas: and in every such case the writ of *venire facias juratores* for summoning a jury to try such issue shall or may be made returnable and returned in such of the said three Courts as the issue is intended to be tried in; and a transcript of the said record in Chancery, containing such issue, shall or may thereupon be sent or taken into the Court in which such writ of *venire facias* shall be made returnable, in like manner as records containing issues between her Majesty and any patentee or other person may now be sent or taken by the said Court of Chancery into the Court of Queen's Bench, and it shall not be necessary to issue any writ of *mittimus* or other writ for the sending or taking such transcript into either of the said Courts; and in case such writ of *venire facias* shall be made returnable in either of the said Courts of Common Pleas or Exchequer of Pleas, such Court shall, upon the transcript of the said record being brought into such Court, proceed to try such issue either at Bar or at Nisi Prius as such Court shall think fit, and in like manner as such issue would or might have been tried in the Court of Queen's Bench in case such writ of *venire facias* had been made returnable in that Court, and the said transcript, or the original record, had been taken or deemed to be taken by the Lord Chancellor into that Court; and upon any such transcript as aforesaid being taken or brought into either of the said Courts of Common Pleas or Exchequer of Pleas such Court shall or may issue such writs, make such rules, and proceed therein in all respects for the trial or other lawful determination of the issue therein contained, in like manner as the Court of Queen's Bench could or might have done if such transcript or the

original record had been taken into the Court of Queen's Bench, and with full power to set aside or vacate any trial, verdict, or other proceeding in like manner as could or might have been done by the said Court of Queen's Bench; and upon the trial of any such issue as aforesaid had or completed a transcript of the verdict of the jury and proceedings of the Court upon such issue or the trial thereof shall be taken into the said Court of Chancery, to the end that the said last-mentioned Court shall or may give judgment therein according to the law and custom of England; and no writ of mittimus or other writ shall be necessary for the purpose of remanding or taking a transcript of any such verdict and proceedings as aforesaid into the said Court of Chancery. S. 29.

Issues upon traverses to be tried as issues in scire facias.—That every issue of fact to be tried by the country which has already been joined or which may at any time hereafter be joined upon any traverse to an inquisition shall or may be tried in any or either of her Majesty's Superior Courts of Law, in like manner as by this act provided with respect to the trial of issues in fact by the country in actions of *scire facias* to repeal, cancel, or vacate letters patent or charters. S. 30.

Record of issue to be filed.—That in case any issue at law, on demurrer or otherwise, shall be joined in any action of *scire facias*, or upon any traverse of an inquisition, then and in such case the record of such issue shall be made up and filed in the office of the Petty Bag, and a transcript of the said record shall or may thereupon be sent or taken into any one of the three Courts of Queen's Bench, Common Pleas, or Exchequer; and such Court shall, upon the transcript being brought into any such Court, proceed to hear and determine the same, in like manner as records of issues in law from the common-law side of the said Court of Chancery may now be heard and determined in the Court of Queen's Bench; and upon the determination of any such issue in law a transcript of the judgment of such Court upon such issue shall be taken into the said Court of Chancery, to the end that the said last-mentioned Court shall or may give judgment therein according to the law and custom of England. S. 31.

Costs.—That in all cases where any party shall be entitled to the costs of any such issues, or of any other proceedings or matters provided for by this act, in any of the said Courts, such costs shall be taxed and regulated by one of the Masters of the said Court respectively, who shall indorse his allocatur on the postea or rule, as the case may be, before the same shall be taken or returned into the Court of Chancery as aforesaid. S. 32.

Writs and proceedings to be prepared by parties or their attornies.—That every writ which shall or may, at any time after this act shall come into operation, lawfully issue out of the said office of the Petty Bag, under the said Chancery Common-Law Seal, at the instance of any person, and every record and proceeding whatsoever on the Common-Law side of the said Court of Chancery, shall be prepared, ingrossed, and issued by the party requiring or conducting the same, subject, nevertheless, to such rules and regulations as shall or may be made and for the time being in force, by virtue of this act or otherwise, for regulating the practice of the Common-Law side of the said Court of Chancery, and also subject to the payment of such lawful fees as shall or may be payable for or in respect thereof; and upon payment of such fees, and complying with such rules, such writs, records, and proceedings shall (when necessary, and if lawful and regular,) be duly sealed. S. 33.

Judges may dispose of matters incident to any action.—That in every action, suit, and proceeding now pending, or which at any time hereafter shall be commenced or pending in the said Court of Chancery on the Common-Law side thereof, it shall be lawful for the Superior Courts of Common Law, and the judges thereof respectively, and they are hereby respectively required, to hear and determine all such matters or applications arising in or incident to any such action, suit, or proceeding as aforesaid, as before the passing of this act might have been heard and determined by the Lord Chancellor and the Master of the Rolls, or either of them, and also to transact, do, and perform all such business, matters, and things in, about, touching, or concerning any action, suit, or proceeding on the Common-Law side of the said Court of Chancery as by virtue of any orders or regulations for the time being in force by virtue of this act may be transacted, done, or performed by such judge, subject nevertheless and according to the provisions of this act, and the laws, rules, and regulations for the time being in force for the regulation of the said Court, and the practice and proceedings thereof. S. 34.

Custody of Records. — That it shall and may be lawful for the Master of the Rolls to make such rules, orders, and regulations from time to time for the transfer, care, and custody of the records, enrolments, indexes, books, documents, or other proceedings now or hereafter to be filed, lodged, or be in the said office of the Petty Bag, or in the custody of the said clerk of the said office, and the endorsement thereof, and the filing of writs and other proceedings, and all other matters and things relating to the matters aforesaid, as to the Master of the Rolls shall seem fit and proper. S. 35.

General rules and orders. — That it shall be lawful for the Lord Chancellor, with the advice and assistance of the Master of the Rolls, from time to time hereafter to make such alterations, orders, rules, and regulations as he shall, with such advice and assistance as aforesaid, think fit, in and respecting the said office of the Petty Bag, and the business and practice thereof, the duties of the said clerk, and the transaction, management, and conduct of the business thereof, and also in and respecting the modes of suing out, preparing, in-

grossing, issuing, sealing, signing, serving, executing, and returning writs, process, rules, notices, and other instruments issuing out of or authorized or required by the said Court or the practice thereof, and also from time to time to rescind, alter, or vary such alterations, orders, rules, and regulations: Provided always, that no such alterations, orders, rules, or regulations as aforesaid shall be contrary to or inconsistent with the provisions of this act. S. 36.

Officers' privilege abolished. — That no person whomsoever who now is or at any time hereafter shall be an officer of the said Court of Chancery shall at any time after the passing of this act have or be entitled as such officer to any privilege to commence or prosecute any action or suit in the said Court of Chancery, other than and except such actions and suits as may be commenced in the said Court by every or any other person. S. 37.

Proviso as to existing actions.—That nothing hereinbefore contained shall hinder or prevent any action or suit already commenced by or against any officer of the said Court of Chancery from being prosecuted, and that the parties in or to every such action or suit shall or may, by themselves or by their attorneys respectively (to be by them respectively appointed,) prosecute and defend such action or suit, and that judgment shall or may be given in such action or suit, or such action or suit or otherwise disposed of, in like manner as if this act had not been passed, subject nevertheless to such rules, orders, and regulations as shall or may be made in pursuance of this act. S. 38.

Parties or attorneys to cause names to be entered in a book.—That every person, party to any action, suit, or proceeding now pending in the said Court of Chancery on the Common-Law side thereof, shall, before taking any fresh step in or about any such action, suit, or proceeding, cause to be entered in a book to be kept in the said Petty Bag office, if he intends to act in person and not by attorney therein, his own name and address, and if he intends to act by attorney and not in person, then the name and address of his attorney; and if any such person or attorney resides more than three miles from the said office, some place within that distance shall be mentioned and entered in the said book, at or to which pleadings, notices, and other proceedings may be left or sent for such person or his attorney; and every attorney shall, before he acts as the attorney of any person in the said Court, cause to be entered in such book as aforesaid his name and also his address, or some place at or to which pleadings, notices, or other proceedings may be left for or sent to him. S. 39.

Affidavits may be sworn before clerk of Petty Bag.—That any affidavit, affirmation, or declaration to be sworn or made or taken, and read or used in the said Court, shall or may be sworn, made, or taken by or before the clerk of the Petty Bag for the time being, who is hereby authorized and required to administer, receive, or take the necessary and proper oath, affirmation, or declaration to every person desirous of swearing, making, or taking any such affidavit, affirmation, or declaration as aforesaid; and every person who shall wilfully and corruptly swear, affirm, or declare falsely in any such affidavit, affirmation, or declaration, shall be guilty of perjury, and shall be prosecuted and punished accordingly. S. 40.

Saving the jurisdiction of Lord Chancellor and Master of the Rolls. — That nothing in this act expressed or contained shall take away or in anywise diminish or prejudice the jurisdiction or any of the powers, rights, or privileges of the Lord Chancellor, as judge of the said Court of Chancery, or otherwise howsoever, or the jurisdiction or any of the powers, rights, or privileges of the Master of the Rolls, as the keeper of the records of the said Court, or as a master or judge of the said Court, or otherwise. S. 41.

Forms of writs. — That it shall be lawful for the Lord Chancellor, with the advice and assistance of the Master of the Rolls, from time to time to ordain, settle, and approve of the form of any description of writ or writs which may be deemed necessary to be issued for the purpose of giving effect to any description of judgment, order, proceeding, or matter of or pending in or to be taken in the said Court of Chancery, or for the furtherance of the business of or originating in the said Court of Chancery. S. 42.

Courts of Common Law to take cognizance of writs.—That every of her Majesty's Courts of Common Law, and all other Courts, judges, officers, and others, shall take cognizance of all and every of writs as aforesaid, and give effect thereto in such manner as may be requisite, and, if necessary, the judges of such Courts respectively shall and they are hereby required to make such rules and regulations for the practice of their respective Courts thereupon as to them respectively shall seem fitting, which shall be signed by the judge or by the major part in number of the judges of the said Courts respectively, and if there be more than one judge of any such Court the chief judge of such Court (if there be a chief judge) shall be one. S. 43.

Monies paid into Court for her Majesty's use shall continue to be received as heretofore, &c.—That all monies paid into the said Court for her Majesty's use shall continue to be received as heretofore by the said clerk of the Petty Bag, and the several accounts of fines, issues, amerciaments, penalties, and recognizances set, lost, imposed, or forfeited to or for the use of her Majesty in the said office of the Petty Bag, required by any act now in force to be rendered and made by the said clerk of the Petty Bag, and all other acts, duties, and services now done, performed, and rendered by the said clerk of the Petty Bag touching the receipt and payment of monies to or for the use of her Majesty, and the accounts to be rendered thereof, shall continue to be done, performed, and rendered as heretofore by the said clerk of the Petty Bag. S. 44.

Compensations. — That it shall be lawful for the Lord Chancellor, with the consent of the Commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, to award such compensation, in such manner and upon such conditions as he may think fit, to the senior and second clerk of the said office of Petty Bag, in consideration of the loss they will or may have respectively sustained by the abolition of their offices, and that such compensations shall be paid by the said Accountant-General, by virtue of an order to be made by the Lord Chancellor, out of the fund intituled "The Suitors' Fee Fund Account." S. 45.

QUESTIONS AT THE EXAMIN ATION

Michaelmas Term, 1848.

I. Preliminary.

Where, and with whom, did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books which you have read and studied.

Have you attended any and what law lectures?

II. Common and Statute Law, and Practice of the Courts.

A client brings an overdue bill of exchange to his attorney; give a detailed account of the steps that must be taken to enforce payment. Suggest any difficulties that occur to you that might arise as to the recovery: also some of the different ways in which the client might be holder of the bill?

An orphan of tender years has had his leg broken by wilful negligence, can he bring an action for the injury; and if so, how and what action?

Can a defendant ever be arrested on *mesne process*; and if so, under what circumstances?

Where several defendants live in different counties, can they all be served with one writ of summons?

If a defendant cannot be found or served with a writ of summons, what steps must be adopted to enable the plaintiff to proceed?

In the Rules for Pleading, "It is ordered that no summons or order to plead several matters shall be necessary in certain cases, but that in those cases a rule shall be drawn up by the proper officer, upon the production of the engrossment of the pleas or a draft or copy thereof;" state what the pleas are, or some of them, to which this rule applies.

What service is necessary to enable a party to obtain an attachment?

If a defendant wishes to inspect a document in the hands of the plaintiff, as for instance a bill of exchange or lease on which he is sued, and the plaintiff refuses to produce it, is there any mode of enforcing the production?

A. brings an action on a policy of insurance, his principal witnesses reside at Bourdeaux and Dublin, and refuse to come over to be examined; can the plaintiff enforce their attendance, or how can he obtain their testimony? If an important witness, in London for instance, is too ill to attend, and unlikely to recover, is it possible to prevent the loss of such evidence?

What are the issuable, and what the non-issuable Terms?

Where a rule for a new trial is made absolute, and no mention is made of the costs of the first trial, which party will be entitled to them, the party who succeeds on the first trial, or the party who succeeds on the second trial?

A plaintiff having joined issue, and given notice of trial, countermands and proceeds no further; has the defendant any mode of compelling the plaintiff to proceed, or to get rid of the cause; and if so, at what time?

For how long a period can a debt be recovered after it is due? can the time limited for the recovery be extended by any proceedings, legal or otherwise?

Plaintiff and defendant both reside in London. What is the earliest period in which a plaintiff, in an action of debt, can obtain judgment by default? State the different steps that are necessary, and the time occupied by each step; and supposing the writ served on the 1st of December, give the day of the month on which judgment can be signed?

After plaintiff has recovered judgment, what are the different modes to try and enforce payment.

III. Equity and Practice of the Courts.

How may equity be defined?

How does equity differ from law?

In what cases does equity give ordinary relief?

State some of the objects attainable by means of a Court of Equity.

What is the strict rule as to making parties to a suit?

Is this rule ever relaxed; under what circumstances, and to what extent?

Is a bankrupt a necessary party to a bill filed against his assignees?

What authority ought to be taken by a solicitor from his client for the prosecution or defence of a suit in equity?

How is such a suit to be instituted?

What is the first proceeding in a suit in equity?

What are the several parts of a bill in equity?

By whom must a bill be filed?

What relief will a Court of Equity give in the case of a contract obtained by fraud?

Is an executor justified in paying a simple contract debt before a specialty debt, or one simple contract or specialty debt before another simple contract or specialty debt?

In what way does the filing of a bill for the administration of a testator's estate affect the

executer's right to deal with the assets in payment of debts?

IV. Conveyancing.

What is a lease? Give the ordinary outline or form of a lease of a house.

Does the surrender of an original lease, for the purpose of its renewal, require, to its efficiency, the surrender of an under-lease; or will it in any way affect such under-lease? Give the reason for your answer.

What is the effectual difference between an estate in joint tenancy and that in coparcenery; and how is each derived?

What is an estate in remainder and that in reversion?

What are advowsons; how severally defined or denominated? and if an advowson be vested in coparceners, how and by whom is the presentation to a living to be made?

What is a mortgage?

State the general outline or form of a mortgage of leasehold houses.

Will any, and, if any, what length of time, bar the mortgagor's right to redeem; and are there any and what circumstances which will preserve that right beyond the time limited by the statute?

What is required to constitute an equitable mortgage?

What is an estate tail? State what words create such an estate.

Who is tenant for life generally by the curtesy of England? What are the requisites to establish that right; and is there any and what exception as to such tenancy with respect to any and what lands in any particular county of England?

What are emblements? and state when the lessee of the land has or has not the right to them?

State the requisites to be observed with regard to the due execution and attestation of wills.

What effect has marriage in respect to the will of a man made before his marriage, and unaltered before his decease?

What is dower? and how is it generally barred in a purchase deed or conveyance?

V. Bankruptcy.

State briefly the *principle* of the Bankrupt Laws, and the relief which they afford; and in what essential respect they differ in principle from the Insolvent Laws, and the relief given by the latter.

In order to obtain an adjudication of Bankruptcy, what facts must be proved?

Are any and what persons now rendered liable to the Bankrupt Laws, who formerly were not so; and by what statute or statutes is such liability extended?

By what means can a compulsory act of bankruptcy be obtained, and by what statute are the proceedings for that purpose prescribed?

What is the course to be adopted for obtaining an adjudication of bankruptcy against a member of parliament liable to be declared a bankrupt, and what constitutes his liability?

At what time and how does a bankrupt's estate vest in his assignees?

Must all the property of a bankrupt remain vested in his assignees; or have they the power of repudiating or declining to accept any and what portions thereof?

If a bankrupt becomes entitled to any property by descent, devise, or bequest after the date of a fiat against him, in whom does such property vest?

Does the property of third persons, in the possession of a bankrupt, vest in his assignees; and have the commissioners any and what power over such property, and for whose benefit?

If a creditor hold a mortgage from a bankrupt with a power of sale, and the mortgaged property when sold prove insufficient to pay the debt, has such creditor the right of proving upon the bankrupt's estate for the deficiency, or is he bound to elect between his security or the bankrupt's estate, and in the latter case to give up his security to the assignees? And if a creditor being also a mortgagee has no power of sale in his security, what course may he adopt to obtain such power?

If a trader commit an act of bankruptcy, and afterwards make a *bonâ fide* conveyance for valuable consideration before a fiat issued, would such conveyance be valid under any and what circumstances?

When consent must be obtained by assignees before commencing an action at law or suit in equity, how must they proceed to obtain such consent; and is any similar or other consent necessary before referring any claim to arbitration?

In the event of a trustee becoming a bankrupt, what means has his *cestui que trust* of divesting him of the trust and of obtaining a conveyance or assignment of the trust estate from the bankrupt?

If a lease contain a covenant not to sign without the landlord's consent, and the lessee becomes a bankrupt, is such covenant available against his assignees?

Under what circumstances have powers been given to the commissioners of the Court of Bankruptcy to order the release of a bankrupt from prison; and by what statute are such powers given?

VI. Criminal Law and Proceedings before Magistrates.

State the several modes of proceeding against criminal offenders?

Is the common law offence of forgery, felony or a misdemeanour?

What is the object of a writ of *procedendo*?

What remedies has a person upon whom an assault has been committed?

What has been substituted by the legislature for voluntary affidavits; and what is essential to the validity of such substitute?

How are articles of the peace exhibited?

Into what heads are criminal offences vided?

Is the violation of an act of parliament an offence of itself?

What is the rule as to obtaining a writ of *certiorari* in criminal cases?

Over what places does the jurisdiction of the Central Criminal Court extend; and what is the proper venue for indictments preferred in that Court?

By what mode is the attendance of a witness in criminal cases compellable?

How are peers tried when charged with felony or misdemeanour respectively?

What is a writ of *habeas corpus*; and how is it obtained?

Before what Court are offences committed at sea to be tried?

State generally the law with respect to accessories in criminal cases?

STAMPS ON TRANSFERS OF MORTGAGES.

A MEMORIAL to the Commissioners of Stamps and Taxes has been presented by Mr. A. Chamberlain, of Portsea, solicitor, setting forth—

"That in or about the year 1844, your memorialist prepared a deed of transfer of mortgage with further advance, the particulars whereof are contained in an abstract thereof hereto annexed.

"That your memorialist caused to be affixed to such deed an *ad valorem* stamp of the proper amount for the further advance, and 35*s.* in lieu of lease for year duty, as well as the proper progressive duties.

"That in consequence of a recent decision as to what shall be deemed further security in transfers of mortgages, in the case of *Humberstone and another, v. Jones*, your memorialist has been compelled to have affixed to the above-mentioned deed an additional 35*s.* stamp in respect of the new power of sale therein comprised, and upon such stamp being affixed, has paid the proper officer a penalty of 5*l.*

"That, in omitting to have such stamp affixed before the deed was executed, your memorialist only adopted the practice constantly followed by the profession, it being considered to be established that a new power of sale was not looked upon as further security requiring distinct duty within the meaning of the act of parliament, until the argument and decision of the above-mentioned case; and that your memorialist has not intended any fraud in such omission."

And praying that the Board would order the penalty on stamping the above-mentioned deed to be returned.

The following was the answer received from the Assistant Secretary:—

"I have laid before the Board the memorial forwarded by you from Mr. Chamberlain, solicitor, Portsea, in regard to the circumstances under which he paid a penalty of 5*l.* upon having an additional 35*s.* stamp impressed upon a certain transfer of mortgage. In reply, I am directed to acquaint you that the Board are not authorized to return the penalty in this case."

[We shall resume this subject next week. ED.]

ADMISSION OF SOLICITORS IN CHANCERY.

THE Master of the Rolls has appointed *Wednesday*, Nov. 22nd, at the Rolls Court, Chancery Lane, at a quarter past three in the afternoon, for swearing Solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission, or his Certificate of Practice for the current year, at the Secretary's Office, Rolls Yard, Chancery Lane, on or before *Tuesday*, Nov. 21st.

NOTES OF THE WEEK.

WINTER CRIMINAL ASSIZE.

WE understand that the Commission for the Winter Criminal Assize is to extend to Cheshire, in which county, as well as in Lancashire and Yorkshire, there are a considerable number of persons charged with chartist disturbances, awaiting their trial. Four of the judges are to preside at the approaching Commission, which is to be opened about the same time in York and Liverpool. It is not yet finally determined on what precise day the Assizes are to commence, nor have the names of the judges been announced upon whom this disagreeable and unseasonable duty is to devolve.

NEW TRIAL MOTION PAPER.

The number of motions for new trials in the Term immediately following the Circuits is becoming a serious impediment to the ordinary business of the Term. The list of reserved motions for new trials in the Court of Exchequer was not disposed of until the afternoon of Monday last, (the 13th inst.,) this particular description of business, which was formerly disposed of within the first four days of Term, having occupied on this occasion nine days, to the exclusion nearly of all other business. After the list had been gone through, a formal rule of Court was read, directing that in future when motions for new trials could not be heard within the first four days of Term, and the names of the cases were set down in the list of reserved motions, the parties proposing to move should give notice of such intention, and that the motion was reserved, to the opposite

party; otherwise, a judgment signed in default of such notice would be considered regular.

BUSINESS AT NISI PRIUS AND THE JUDGES' CHAMBERS.

A very remarkable circumstance occurred this week at the *nisi prius* Sittings in the Exchequer. The learned baron who presided in a *crim. con.* cause, adjourned the Court in the midst of the evidence for the plaintiff, in order to attend the business at the *judges' chambers*. The parties and their witnesses, the counsel and attorneys, had to attend again on the following day. There is no doubt, that the business at the judges' chambers is often of great importance to the suitors: questions of pleading, admission of documents, and many others require to be speedily decided; but, as we have often noticed, the greater part of the matters under consideration are merely of a *routine* nature, which (as well as the taking affidavits) might properly be intrusted to one of the 15 Masters. Had this course been adopted, the learned baron, on the occasion referred to, might have finished the cause in hand and attended the chambers afterwards.

This, however, would afford only a partial remedy. The preferable course would be, that one of the judges should sit at chambers whenever the business was of sufficient importance to require it, without having on the same day to hear causes at *nisi prius*, or in the Practice Court. And we earnestly submit that if five are insufficient, another should be appointed. The recent question of the liability of the three Chiefs to attend in rotation with the other judges at chambers, will not, we trust, be lost sight of; but that connected with the grievance which we have just pointed out, a change will be effected, by the better arrangement and due subdivision of judicial labour, so that neither the suitor nor the practitioner may suffer injury or inconvenience.

NOTES OF CASES IN MICHAELMAS TERM.

HEADING OF ATTORNEY'S BILL.

In an action upon an attorney's bill, to which the defendant pleaded:—1st, *non assumpsit;* and 2ndly, that no signed bill was delivered a month before action, pursuant to the statute 6 & 7 Vict. c. 73, s. 37, a very important question arose as to the sufficiency of the bill as delivered. It appeared that a bill was delivered in due time, headed—"In the matter of Mr. and Mrs. J. H.—Mr. H. G. Gridley's costs and charges," and the bill was duly signed and accompanied by a letter addressed to the defendant, in which Mr. Gridley said,—"As I suppose you may be about to leave town, I beg to hand you my account, which I hope will prove satisfactory." It was submitted that it did not sufficiently appear from the heading of the bill and the letter taken together, that it was intended to charge the defendant. *Taylor* v. *Hodgson*, 14 Law Journal (N. S.) Q. B. 310, and a decision of the Irish Court of Exchequer were cited. *Patteson*, J., after some hesitation, decided that the bill delivered was sufficient, and ordered a verdict to be entered for the plaintiff on this issue. The issue raised on the plea of *non assumpsit*, however, was found for the defendant. *Gridley* v. *Austen*. Monday, 6th Nov. Nisi Prius Sitting, Q. B.

ACTION OF SEDUCTION.

In an action brought by an aunt for the seduction of her niece, who was a member of the aunt's family, the learned judge instructed the jury that they might not only take into consideration the injury to the feelings of the plaintiff, but the moral and social obligation under which the aunt might consider herself to contribute to the support of the bastard child of her niece, and the jury thereupon returned a verdict with 200*l.* damages. The Court granted a rule *nisi* for a new trial, unless the family of the person seduced would undertake that no further pecuniary claim should be made upon the seducer in respect of his connection with the plaintiff's niece. The anomalous character of the action, and its repugnance to legal principle, was tacitly admitted by the Court. *Brown* v. *Yardley*. Exchequer. Friday, Nov. 3.

LIABILITY OF REGISTERED NEWSPAPER PROPRIETORS.

The 6 & 7 W. 4, c. 76, s. 6, provides that no person shall print or publish a newspaper until a declaration be made and delivered at the Stamp Office, of two persons who shall be proprietors, and that certified copies of such declaration shall be admitted in all proceedings, civil and criminal, touching any newspaper mentioned in such declaration. In a late case, where a reporter brought an action against the registered proprietors of the *Morning Advertiser*, for a breach of contract, the question was raised, whether the registered proprietors, as such, could be made liable for private contracts, the registration being required for public purposes only. *Holcroft* v. *Hoggins*, 2 Com. B. 488, was cited. A rule *nisi* has been granted. *Monaghan* v. *Walter and another*. Com. Pleas. 3rd Nov.

FRIENDLY SOCIETIES' ACTS.

An information was laid before two magistrates of the county of Cambridge, that one Jacob Wisby was a member of a Friendly Society at Harston, and entitled by the rules

to receive therefrom the sum of 5*l.* 8*s.*, being at the rate of 19*s.* a-week during his sickness. The magistrates summoned the stewards of the society before them, and ordered them to pay the money, and, on their failing to do so, issued a warrant, directed to the constable at Harston, commanding him to levy the amount upon the goods of the Society, and, in default of distress, to levy it upon the proper goods and chattels of the stewards. It was contended that after the order for payment had been made, and before the warrant was issued, the stewards ought to have been again summoned before the magistrates to show cause why they neglected to pay it, and that this ought to have been done, both on general principles and by the express provisions of the statute. 10 Geo. 4, c. 56, ss. 27, 28. The Court of Queen's Bench granted a rule to show cause on this point. 6th Nov.

RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

Biggs v. *Naylor*. Nov. 11, 1848.

INFANT.—NEXT FRIEND.—STAYING PROCEEDINGS.

All further proceedings stayed in an infant's suit, though ready for hearing, and reference made to the Master to appoint a guardian and approve of an allowance for maintenance.

THIS was a motion to dismiss a bill filed by the next friend of an infant. It appeared that the infant was entitled to two sums, of 13*l.* and 40*l.* a year respectively, and to a further sum of 3,000*l.* under the will of a person who died in 1846. The suit in which this motion was made, related to the last-mentioned sum only, which the bill stated not to have been invested. It appeared, however, that the statement was erroneous: the fund had been invested in the 3¼ per cent. stock, under a general direction in the will to invest in government or real securities. It was contended that this was not a proper mode of investment, and that it might prove disadvantageous to the infant, since the interest was by act of parliament to be reduced to 3 per cent., and therefore the value of the stock would ultimately fall. The motion to dismiss was made by the infant's brother-in-law, under whose care the infant, who was nine years of age, was residing. And it appeared that the next friend, through whose hands the annual payments of 13*l.* and 40*l.* passed, had suspended these payments until the question in the suit should be decided.

The cause was stated to be ready for hearing.

Mr. *Turner* and Mr. *Simpson* for the motion. *Guy* v. *Guy*, 2 Bea. 460.

Mr. *Schomberg*, contrà.

Mr. *Walpole* and Mr. *Randal*, for the trustees of the 3,000*l.*

Lord *Langdale* made an order to stay all proceedings, and referred it to the Master to appoint a guardian for the infant, and approve of an allowance for maintenance. Costs reserved until after the Master should have made his report.

Walker v. *Dewbury*. Nov. 13, 1848.

PRODUCTION OF PAPERS.

An admission that papers had come into the hands of A. *as solicitor for certain trustees, will not justify an order for their production against the representatives of the surviving trustee.*

Mr. *Miller* moved for the production of documents, which were admitted by the answers to relate to the matters in question in the cause, and to have been placed in the hands of Mr. Toole, as solicitor to three trustees against the representatives of the survivor of whom the present suit was brought. The attorney, through whom the answer of the present defendant was put in, appears to be Mr. Toole, but it was not admitted in the answers that he was their solicitor.

Mr. *Smythe*, Mr. *Goodeve*, and Mr. *Lovat*, appeared for the different parties.

Lord *Langdale* said, that he could not make the order. He could proceed only on admissions in the answer, and an admission that documents had come into the hands of a party as solicitor to those whom the present defendants represented, would not justify an order against the representatives. — Mr. Toole had been spoken of as solicitor to the trust, but the Court knew of no such office. The solicitor must be solicitor to the persons actually acting in execution of the trust.

Vice-Chancellor Knight Bruce.

(In Bankruptcy.)

Exparte Hernaman, in re Ewen. Wednesday, May 3, 1848.

SURETY.—SUBSTITUTED DEBT.—PROOF.

A trader was indebted to his bankers, who agreed to take half if secured by the joint and several bond of the debtor and his son, payable by yearly instalments; and if any instalments should be in arrear, interest was to be paid on them. The bond was given, but no written particulars of the agreement were made. Before the first instalment was due the debtor and the bankers both became bankrupts: Held, that the assignees of the bankers could not prove for the original amount of debt, on the

ground that as an additional debtor was introduced, and as the bond contemplated the instalments falling into arrear, the same was extinguished, and proof could only be made for the substituted debt.

THIS was a petition presented by the assignees of Messrs. Gundry, bankers at Bridport, for liberty to prove for 21,193*l.* 3*s.* 8*d.* against the estate of George Davy Ewens, under the following circumstances:—G. D. Ewens was, in September, 1846, indebted to Messrs. Gundry, on his banking account with them, in a sum exceeding 20,000*l.* In that month, at the instance of Messrs. Gundry, the affairs of G. D. Ewens were investigated, when it appeared that his debts to other persons amounted to 9,000*l.*, and that his credits did not exceed 10,000*l.* A negociation thereupon ensued with a view to a compromise, and was continued until October, 1847. On the 28th of October an interview took place between Mr. Walter Gundry, one of the partners, and Mr. Charles H. Ewens, a son of G. D. Ewens, when Mr. Gundry proposed that Mr. C. H. Ewens and his father should give a bond for the payment of 10,000*l.* by annual instalments of 1,000*l.* each, and that when such payment should have been made, the debt due to the bankers should be considered as reduced to 10,000*l.* and cancelled. Mr. C. H. Ewens, having consulted his father, wrote to Mr. W. Gundry, on the 29th of October, as follows:—"I have laid your proposal before my father, and as he is desirous of showing you that it is his wish to carry out your views to the best of his ability, he has assented to your proposal." The solicitor for the bankers accordingly prepared a joint and several bond in the penal sum of 20,000*l.*, for the payment by G. D. Ewens of 10,000*l.* by instalments of 1,000*l.* each, payable on the 24th of June in each year, beginning in 1848, "with interest on all, any, or either of the said instalments which may happen to be in arrear and unpaid on any or either of the days hereinbefore mentioned." When this bond was executed a line was drawn at the end of the old account in the bank, and a new account was opened between G. D. Ewens and the bank. On the 15th of November, 1847, a fiat in bankruptcy was issued against the Messrs. Gundry, and on the 8th of December, 1847, a fiat was issued against G. D. Ewens. On a proof being tendered by the assignees of Gundry's estate against the estate of Ewens for the amount of the old debt (21,193*l.* 3*s.* 8*d.*,) it was rejected by the Commissioner, and this petition was accordingly presented. The affidavits by Mr. W. Gundry and Mr. Budden (the chief clerk of the bank) on behalf of the petitioners, and of Mr. C. H. Ewens and Mr. G. D. Ewens on behalf of the respondents, were somewhat conflicting—the former stating the understanding to be, that upon payment of the instalments the original debt should be considered cancelled; and the latter that the bond was taken in satisfaction of the old debt. Mr. C. H. Ewens, by his statement, said,—"I would never have signed the bond if I had had any idea that under any circumstances the original debt would have revived." The Commissioner refused to allow the assignees of Messrs. Gundry to prove for the 20,000*l.*, and this petition was presented by way of appeal.

Mr. *Bacon* and Mr. *J. V. Prior*, for the petition, cited the case of *Exparte Bennett*, 2 Atk. 527, to show that where a new debt is proposed to be substituted for an old one, if the terms of the new contract are not fulfilled, the old debt revives.

Mr. *Swanston*, Mr. *Russell* and Mr. *Terrell*, for the respondents were not called upon.

His Honour. There are two particular features in this case: one that an additional debtor is introduced, and the other that the bond on the face of it contemplates that the instalments may fall into arrear. When to these circumstances is added the fact that none of the particulars of agreement have been put into writing, I must say that I find myself unable to differ from the Commissioner, and the petition must therefore be dismissed.

Vice-Chancellor Wigram.

Hutton v. *Hepworth.* July 14, 1848.

PRACTICE.—ORDER VARYING FROM NOTICE OF MOTION.—APPLICATION FOR TIME IS NOT AN APPEARANCE.

An order made upon affidavit of the service of notice of motion must not vary from the terms of the notice, even though less than what asked for, if such variation be more prejudicial to the other side than what was asked.

THIS was a motion to dismiss an order made upon affidavit of service of motion. The facts were these:—The original cause came on for hearing April, 1846. A supplemental bill was filed by plaintiff on the first day of Easter Term, 1847, under liberty given to him to do so at the original hearing; the answer was put in, and on the 18th February, 1848, replication was filed (by consent) after a notice of motion to dismiss the supplemental bill for want of prosecution had been given. Upon the 23rd of May the defendant gave notice of motion intituled in the original and supplemental suits "that *these suits*" might be dismissed as against him with costs, or that it might be referred to the Taxing Master to tax his, the defendant's, costs in these suits, and that the amount thereof might be paid by the plaintiff; or that the original cause might be put into his Honour's paper of causes again for hearing, for such further or other order as the Court might think just; and that the plaintiff might be ordered to pay the costs of the motion." The motion was made on the 26th of May upon an affidavit of the facts, and stood over that the plaintiff might account for the delay, for which purpose an affidavit was filed by the plaintiff's solicitor the following day. On the 1st of June the motion was renewed, and the plaintiff's counsel did not appear on the

motion, and an order was taken that "*the supplemental bill* be dismissed for want of prosecution, with costs to be paid by the plaintiff; and the original cause be put on the paper for hearing, and the costs of the motion be paid by the plaintiff;" which was the order complained of.

Wood, for the plaintiff, contended that the order being founded upon the affidavit of service of notice of motion, should not have varied from the terms of that notice, and should have been in one of the alternatives there expressed; but not in one and part of another. He suggested that the plaintiff was prejudiced by this variation.

The *Solicitor-General* and Mr. *Humphrey* opposed the motion, upon the grounds that the order taken was comprehended within the terms of the notice; and that the facts of the case justified the order; that upon the first motion, the plaintiff had been represented by counsel, and had filed an affidavit, although they did not afterwards appear; and that it was now open to them to object to the order upon the ground of irregularity; yet the objection (if anything) amounted solely to one for irregularity in fact, though not in terms; and that the plaintiffs were bound to show that the order was bad upon the merits, (which they had not attempted to do,) or failing to do so, the motion should be refused.

The *Vice-Chancellor* said, that the rule was well known, that an order taken upon the affidavit of service of the notice of motion ought not to depart from the terms of the notice. The rule certainly might not universally prevent a party from taking an order for less than his notice expressed, where the lesser order could be made without prejudice to the party against whom it was to operate. Thus, upon notice of motion to pay 500*l.* into Court, the Court might direct 300*l.* to be paid instead of 500*l.* But suppose the case of an estate consisting of two parts, the one productive, the other unproductive and unable to bear its burthens, and that a motion should be made for a receiver of the entire estate; in that case the appointment of a receiver of the entirety would involve the necessity of applying part of the surplus profits of the productive estate to the preservation of the unproductive, and might not be objected to by the owner of both; but the same party might well object to the appointment of a receiver of the productive part of the estate, leaving the other part to bear its charges alone, for which, by the supposition, it was insufficient. The less extensive order could not in such a case be taken upon affidavit of service.

In this case there are two bills, one original the other supplemental. The motion asked that both suits might be dismissed, or in the alternative, that the original cause might be put in the paper for hearing. He did not advert to the other alternative, as to the payment of costs, for it was not suggested that such an order could be made. If the order had gone no further than to direct that the original cause should be put into the paper for hearing, it would have been right. The plaintiff might then have applied to bring on the supplemental cause; or if both bills had been dismissed according to the notice, the plaintiff might have been content, or might have been concluded by the order, if the circumstances had justified it. The order to dismiss the supplemental cause, and to bring on the original cause for hearing, was essentially different in its consequences from either of the alternatives. The order ought to be discharged, except so far as it directed the original cause to be set down for hearing. The application by the plaintiff's counsel for time to file affidavits he should have thought was an appearance on the motion, but he was informed by the registrar that it was not considered so in practice.

Costs of motion refused.

Queen's Bench.

(Before the Four Judges.)

Collin v. *Kingsbury*. Michaelmas Term, 1848.

DEBT FOR DOUBLE RENT.

In an action of debt, the plaintiff, in the first count of the declaration, claimed double value for holding over after notice to quit, and in the second count a single value for use and occupation of the same premises. The defendant pleaded the general issue and payment into Court of the sum demanded in the second count, which was accepted by the plaintiff.

Held, *that the plaintiff, by accepting the sum paid into Court on the second count, did not preclude himself from obtaining a verdict on the first count for the remainder of the sum due.*

THIS was an action of debt. The first count in the declaration was for double value of premises held over by the defendant after notice to quit was given. The second count was for use and occupation of the same premises. The defendant pleaded the general issue as to the first count, and as to the second count, payment into Court of 7*5l.*, the sum demanded, which the plaintiff accepted. It appeared by the bill of particulars that the first count was for double value of the same premises in respect of which a single value was claimed in the second count. At the trial, a verdict was found for the plaintiff for 75*l.*

Mr. *Humfrey* now moved, in pursuance of leave reserved at the trial either for a nonsuit or to enter a verdict for the defendant. He contended that, inasmuch as the plaintiff in each count of the declaration claimed rent in respect of the same premises, that having accepted the money paid into Court on the second count, and having therefore admitted that a tenancy existed between him and the defendant, he could not afterwards recover on the first count on the ground that the defendant wrongfully held the premises after notice to terminate the tenancy had been given.

[*Wightman*, J. In the case of *Ryal* v. *Rich*,[a] the circumstances were very similar. The Court there said there was no inconsistency in the plaintiff proceeding on the first count after accepting a single value of the premises. Bayley, J., says,—"If then the plaintiff had recovered upon the first count, the defendant would have been entitled to have the single value paid in deducted out of the double value recovered, and no injustice would be done. And the plaintiff's going on with the action after taking the money out of Court shows that he did not mean to accept it as a compensation for the double value, but only in part satisfaction of his demand."] The inconsistency in this case seems to consist in the plaintiff treating the defendant as a trespasser in the first count, and admitting him to be his tenant in the second count. [Lord *Denman*, C. J. I should say it was no proof of a tenancy, but merely a holding of the premises for a certain time, The plaintiff has a vested right to the double value and a single value is paid him.]

Cur. adv. vult.

Lord *Denman*, C. J., on a subsequent day, said, the case of *Ryal* v. *Rich* is almost the same as this, and the same opinion is there expressed which I adopted at the trial. There is one distinction. In the case in East there was a question of waiver, but in this case the defendant's counsel relied on the bill of particulars, and contended, as a matter of law, that the plaintiff, after having accepted a single value, could not proceed on the count for double value. We are of opinion that the case in East is decisive of the present, and that no rule should be granted.

Common Pleas.

Darrington v. *Price*. Trinity Term, 1848.

PRACTICE AT CHAMBERS. — JURISDICTION OF SINGLE JUDGE.— CHANGE OF VENUE AFTER SUMMONS FOR TIME TO PLEAD.

The defendant having obtained a judge's order for further time to plead, without any condition therein as to changing the venue, abandoned it on the same day, and served upon the plaintiff, together with the general issue, a rule to change the venue, obtained upon the common affidavit. The plaintiff treated the rule to change the venue as a nullity, and obtained an order to set it aside at chambers. But the Court set aside the latter order, holding that, although a judge at chambers had jurisdiction over a rule to change the venue obtained upon the common affidavit, yet that the defendant had not waived his right to change the venue.

RULE *nisi* to set aside an order of Mr. Justice Coltman, and all proceedings subsequent to the plea in the cause, upon payment of the costs occasioned by such proceedings and of the present application. The original venue in the cause was Essex. The declaration was filed on the 14th February, 1848. On the 23rd of February, a summons for further time to plead was taken out by the defendant, and on the following day an order was made for two days further time to plead, the learned judge refusing to make such order, without prejudice to the defendant's right to change the venue upon the common affidavit. Instead of drawing up that order, the defendant on the same day, the 24th of February, delivered a plea of the general issue, and served a rule to change the venue to London, such rule having been obtained upon the common affidavit. On the 25th of February, the plaintiff delivered the issue with notice of trial for the Essex Spring Assizes, and on the next day (the 26th) the defendant took out a summons to set aside the issue and notice of trial, on the ground that the venue had been changed. On the 28th that summons was heard, and Mr. Justice Coltman made an order to set aside the rule changing the venue to London, and subsequently the cause was tried at Essex as an undefended cause, and a verdict found for the plaintiff.

Prentice showed cause against the rule. The first point raised was, as to the power of a judge at chambers to make the order setting aside the rule of Court for changing the venue, and it was submitted that he had in that respect the same power as the Court. In Chief Justice Wilmot's life and opinions, pages 264, 266, it was so laid down; and in *Joseph* v. *Perry*, 3 Dowl. 699. Then as to the second point, whether or not the power of the judge had in this case been properly exercised. After the order for further time to plead, the rule to change the venue was irregular. *Shipley* v. *Cooper*, 7 T. R. 698; *Waring* v. *Holt*, 3 Price, 3. The cases of *Cocker* v. *Tempell*, 7 M. & W. 502, and *Amner* v. *Cattell*, 5 Bing. 208, were also referred to.

Hawkins, contrà. As to the first point, it was laid down in 2 Chit. Arch. Pr. 1433, that a judge at chambers had no independent power over a rule of the full Court. [*Maule*, J. No doubt that a judge at chambers would not set aside a rule heard upon argument in the full Court, unless by consent or direction of the Court.] Then assuming the judge in the present case had jurisdiction, the defendant's proceeding was quite regular. Judgment might have been signed on the 23rd of February, because it was clear that the summons was not a stay of proceedings until returnable on the morning of the 24th. But judgment was not signed, and the defendant had afterwards a right to elect not to draw up the order, and was entitled to a reasonable time (the rest of the 24th) to exercise that election. *Sedgewick* v. *Allerton*, 7 East, 542; *Kenney* v. *Hutchinson*, 6 M. & W. 134; *Hughes* v. *Walden*, 5 B. & C. 770; *Meagens* v. *Perry*, 15 M. & W. 537. The mere taking out of a summons on the 23rd for further time to plead was no waiver of the defendant's right to

[a] 10 East, 48.

change the venue. *Wilson* v. *Harris*, 2 B. & P. 320; *Dennis* v. *Fletcher*, Barnes's Notes, 489.

Wilde, C. J. The present rule ought to be made absolute. As to the question of the power of a judge at chambers, experience for some time has shown that the jurisdiction at chambers is a growing jurisdiction, and many things are now done by a judge at chambers that would not formerly have been done, and I think the public has been benefited by the practice. In considering the question of a judge's power to set aside a rule of Court, the nature of the rule itself must always be looked at. Some rules have been the subject of judicial discretion, and others merely matters of practice; and the rule now in question appears to be one of the latter description, one which in effect the Court never heard, being merely an ordinary step in the cause. Now, although it is important that the jurisdiction of a single judge should be held not to apply to a rule of Court after the exercise of judicial discretion, yet there seems to be no good reason why a matter of practice, like the present should not be dealt with. In Adams on Ejectment, 4th ed., 217, it is said, on the authority of *Doe dem. Harwood* v. *Sippercott*, *Coram* Wood, B., Trin. Vac. 1817, MSS., that "if a party should be admitted to defend as landlord whose title is inconsistent with the possession of the tenant, the lessor of the plaintiff may apply to the Court, or to a judge at chambers, and have the rule discharged." It seems to me, therefore, although I am not aware of any other decision than that, on looking at the nature of the rule, there is no good reason why this rule should not be open to the discretion of a single judge in the same way as any other practice matter. Then, as to the other point in the case, the defendant, in seeking to bring back the cause, did nothing more than he had a right to do, and to deprive him of that right very strong circumstances must be shown to the Court. In the present case some confusion arises from the fact of the question turning on a summons for time to plead. Suppose any other summons had been taken out, what right would the defendant have waived? The plaintiff might have signed judgment all the previous day, but he did not; and it seems to me, on the whole, that the defendant had not waived his right to change the venue in the present case.

The rest of the Court concurred.

Rule absolute.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Law of Evidence.

ACCOUNTANT.

Result of Inspection.—The Court refused to receive, at the hearing of a cause, the deposition of an accountant, containing a statement of the result of his examination of partnership account books, where the books on which he made his statement were not in evidence; but, *semble*, that if the books had been in evidence, the deposition of the accountant of the result of his examination of them would be receivable as the evidence of a person of skill. *Johnson* v. *Kershaw*, 1 De G. & S. 260.

ATTESTING WITNESS BLIND.

Where an attesting witness to a deed had become blind, *Held*, that it was not sufficient to prove the handwriting of the signature, but that he must be also examined. *Rees* v. *Williams*, 1 De G. & S. 314.

BILL OF SALE.

Assignment by the sheriff proved by the bill of sale of the undersheriff, without proof of the authority by the sheriff to the undersheriff. *Wood* v. *Rowcliffe*, 6 Hare, 186.

BILL OF EXCHANGE.

See *Notice of Dishonour*.

CHURCHWARDENS.

Official character.—In ejectment, under stat. 59 G. 3; c. 12, s. 17, for a parish house, on the demise of *A.* and *B.*, stated in the declaration to be the churchwardens and overseers of a parish, the fact that they acted as churchwardens and overseers at the time of the alleged demise is sufficient *primâ facie* proof, for the purposes of the action, that they held the offices at the time. *Doe d. Bowley* v. *Barnes*, 8 Q. B. 1037.

COMMISSION TO EXAMINE WITNESSES.

Additional interrogatories.—General Orders.—Since the Orders of May, 1845, where a commission issues for the examination of witnesses, additional interrogatories may be exhibited, from time to time, without any Order of Court. *Lancashire* v. *Lancashire*, 10 Beav. 26.

COMPETENCY.

Stat. 6 & 7 Vict. c. 85.—Examination of one defendant as witness for another having a similar interest. Under the statute "for improving the Law of Evidence, (6 & 7 Vict. c. 85,) one defendant in a suit in equity is a competent witness in the same cause on behalf of another defendant; and it is not a just exception to his evidence that the title of the plaintiff to sustain the suit against both defendants depends upon the same issue; that fact can only be considered as affecting, or tending to affect, the credit of such defendant as a witness. *Wood* v. *Rowcliffe*, 6 Hare, 183.

CROSS-EXAMINATION.

Quære, whether a party can read the cross-examination of the witness of his adversary where the latter does not read the examination in chief. *Barker* v. *Birch*, 1 De G. & S. 376.

DEFENDANT EXAMINED AS WITNESS.

After the examination of witnesses between all the plaintiffs and all the defendants, leave cannot be given to withdraw the replication and examine a defendant.

A witness permitted to be re-examined upon the former interrogations after releasing interest. *Bousfield* v. *Mould*, 1 De G. & S. 347.

Cases cited in the judgment: Vaughan v. Worrall, 2 Swanst. 402; Milward v. Atkins, Jac. 339, note a.

EJECTMENT.

Deed coming from proper custody.—In an action of ejectment, *W.*, an agent for the lessor of the plaintiff, who had in his possession a lease for lives of certain lands, which expired in 1846, attended at the Circuit town, but was absent the day of the trial. The attorney for the plaintiff stated he cut open the carpet bag belonging to *W.*, and took out a deed, which he produced.

Held, that there was sufficient *primâ facie* evidence that the deed had come from a proper place of custody. *Doe d. Earl of Shrewsbury* v. *Keeling*, 36 L. O. 312.

INTERROGATORIES.

See *Suppressing Interrogatories; Witness.*

LANDLORD AND TENANT.

See *Sheriff.*

NOTICE OF DISHONOUR OF BILL.

A notice of dishonour given by a party to a bill other than the holder, should show that the party to whom it is addressed is looked to for payment.

In an action by indorsee against the drawer of a bill of exchange, it was proved that the defendant called at *C.*'s, a party to the bill, (but not the holder,) to whom notice of dishonour had been given by the plaintiff, the same evening the bill became due, and, on inquiries about the bill, was told by *C.*'s foreman, that "it had been presented and was not taken up." The next day the defendant called on *C.* about the bill, and was told by him that the acceptor "had not taken it up,"—"that it was not paid." There was no evidence to show what *C.*'s business was, or that his foreman had any authority to give notice of dishonour: *Held*, no sufficient notice of dishonour. *East* v. *Smith*, 4 D. & L. 744.

Case cited in the judgment: Lewis v. Gomperts, 6 M. & W. 399, 402-3.

RE-EXAMINATION.

Evidence after publication.—In the prosecution of inquiries in the Master's office, the plaintiff brought in a state of facts, and examined under a commission witnesses, whose evidence charged the defendant with the receipt of monies, and of whose depositions publication had passed. The defendant then brought in a state of facts, admitting the receipts, but discharging the defendants by payments. On motion, the Court gave the defendant liberty to issue a commission and examine witnesses in support of the discharge, but not to contradict the plaintiff's state of facts. *Parker* v. *Peet*, 1 De G. & S. 216.

See *Witness*, 1.

SHERIFF.

Negligence.—Landlord's claim for rent.—Production of lease.—In an action against a sheriff for negligence in not levying under a writ of *fi. fa.*, the defence was, that the sheriff had withdrawn, on notice from the landlord that rent was due. At the trial the landlord stated that rent was due, but on cross-examination it appeared that the execution-debtor held under a lease which was not produced: *Held*, that the fact of rent being due could not be proved without production of the lease, and that the plaintiff was entitled to a verdict. *Augustien* v. *Challis*, 1 Exch. R. 279.

SPECIAL PROPERTY BY AGREEMENT.

What proveable under not possessed.—Plaintiff, having a cow at grass in defendant's field, and being indebted for the agistment, agreed with him that the cow should be a security, that he would not remove her till defendant was paid, and that, if he did, defendant might take her wherever she might be, and keep her till he was paid. Plaintiff removed the cow, not having paid the debt; and defendant seized her in the high road. In an action of trespass for taking,

Held, that the agreement might be set up as a defence under a plea, that the cow was not the plaintiff's. *Richards* v. *Symons*, 8 Q. B. 90.

SUBPŒNA DUCES TECUM.

See *Witness*, 1.

SUPPRESSING INTERROGATORIES.

Questions between co-defendants not in issue in cause.—A decree directed an inquiry whether certain younger children had made any and what assignments of their shares, and under what circumstances. One of the defendants claiming to be an assignee of a share, carried into the Master's office a state of facts, setting forth the assignment under which he claimed. A co-defendant (one of the children) carried in a counter state of facts, impeaching the assignment, as having been executed for an inadequate consideration, and without legal assistance. A motion to suppress interrogatories, filed in a counter state of facts, as relating to questions in dispute between co-defendants only, and not in issue in the cause, was refused. *Lennard* v. *Curzon*, 1 De G. &. S. 350.

TRUSTEES.

Parties constituting a class.—Protection or distribution of trust property.—To a suit by one or more *cestuis que trust* against trustees, alleging that the trust fund had been invested

on improper security, and seeking to have it restored, all the *cestuis que trust* of the fund must be parties; and if the fund be held in trust for a class of persons, there must, before the cause is heard on the question between plaintiffs and the trustees, be evidence that all the members of the class are before the Court. *Phillipson* v. *Gatty*, 6 Hare, 26.

WITNESS.

1. *Refusal to answer interrogatories.—Re-examination before or after publication.—Subpœna duces tecum.*—On a motion, before publication, to re-examine a witness upon interrogatories which he has refused to answer, and that he may be ordered to produce a document which he has refused to produce, the witness only, and not the parties in the cause, are to be served with notice of the motion; and the rule is the same where the motion is made after publication, unless the case comes within the grounds upon which the Court guards against the re-examination of witnesses. It is not an objection to such a motion that there was an irregularity in the *subpœna duces tecum*, or that the required document was vaguely described in the subpœna, if the witness has appeared and submitted to be examined, and showed by his answer that he identified the document inquired after with the document in his possession.

A *subpœna duces tecum* is a requisition to a witness to produce a document; and an interrogatory requiring a witness to set forth a document in the words is in effect equivalent to a requisition to produce it. The duty of a witness to produce a document called for by the *subpœna duces tecum*, or inquired after by an interrogatory, is the same, whether the document is called for in order to be proved by himself or by another witness. *Tippins* v. *Coates*, 6 Hare, 16.

Case cited in the judgment: Bradshaw v. Bradshaw, 1 R. & Myl. 558.

2. *Immateriality of interrogatory.*—A witness cannot object to answer a question because it relates to private matters, or because it is immaterial, unless the answer may be withheld on some ground of privilege. *Tippins* v. *Coates*, 6 Hare, 16.

Case cited in the judgment: Sandford v. Remington, 2 Ves. jun. 189.

See *Attesting Witness; Defendant's Examination.*

WITNESSES IN FORMER SUIT.

The tenant for life, in possession of the real estate, was also tenant for life of certain personal estates under the same will, and was the heir-at-law of the surviving trustee of the real estate but was not a trustee of the personal estate. Two suits were instituted against him: one was instituted by the tenant for life in remainder of the real estate, complaining of his management of that estate, and praying consequential relief, and particularly the removal of the tenant for life in possession from being trustee; the other suit was instituted by the first tenant in tail in remainder, for the same objects as regarded the real estate, but praying also relief in respect of the personal estate: *Held*, that evidence taken in the former suit was not admissible in the latter, it not appearing that the witnesses were dead or incapable of being examined. *Blagrave* v. *Blagrave*, 1 De G. & S. 252.

BUSINESS OF THE COURTS.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER TRINITY TERM, 1848.

Common Pleas.

Middlesex.

Melton	Fearn	S. J.	Countess Waldegrave	Prom. Pearson
Davies, Son and C.	Doe dem. Conant and another	S. J.	Holmes	Eject. Vallance and B.
Bayley and Janson	Cooper		Delafield	Dt. Pike
J. Birt	Arnett, clk., &c.	S. J.	London and N. Western Railway	Dt. Parker and Co.
W. B. Davis	Manwell, a pauper	S. J.	Charrington and others	Prom. Fry and Co.
Marten and Co.	Stovel	S. J.	Mathias	Prom. G. Pope
T. Roberts	Sibley	S. J.	Price	Prom. Freeman and Co.
M. Lewis	Gannon	S. J.	Weiss	Prom. Whitcombe
Pain and Hatherley	Lomax, jun.	S. J.	Lomax, sen.	Prom. White and Co.
Webber	Avis, admor., &c.	S. J.	Nugee	Ca. Gregory and Co.
S. M. Cooper	H. Gompertz		Keily	Dt. Asprey
J. H. Hembery	West	S. J.	Baxendale	Tres. Tatham and Co.
J. D. Williams	Taylor		Denman	Ca. J. Birt
Adams	Schweizer	S. J.	Kingham and another	Ca. Scutt
E. Lambert	Dawson	S. J.	Ashpitel	Prom. J. H. Lake
C. F. Arundell	Hall	S. J.	Lawrence	Prom. Dawes and Son

J. Towne	Whitman, administratrix, &c.	S. J.	Baxendale	Ca. Tatham and Co.
Bisgood	Flower	S. J.	Shaw and others	Prom. J. B. Oliver
Bailey and Co.	Metropolitan Sewage Manure Co.	S. J.	Moore	Dt. Tatham and Co.
Edwards and Radcliffe	West Cornwall Railway Company	S. J.	Enthoren	Dt. Crowder and M.
W. G. Slack	W. L. Turner	S. J.	C. E. Pepys	Prom. Blower and Co.
Wontner	E. R. Clark	S. J.	The Hon. Brownlow Cecil	Dt. Rickards and W.
Marten and Co.	Doe d. Mills and ors.	S. J.	Samuda and another	Eject. Tucker and S.
Same	Same	S. J.	Same	Eject. Same [& Co.
Same	Same	S. J.	Pratt and others	Eject. {Symes, Weston, Tucker and S.
Same	Same	S. J.	Samuda and others	Eject. {Tucker and S. L. Ratton
Same	Same	S. J.	Samuda and another	Eject. Tucker and S.
Same	Same	S. J.	Same	Eject. Same
Same	Same	S. J.	Same	Eject. Same
Same	Same	S. J.	Same	Eject. Same
A. Robinson	Cant		Hodges, extrix., &c.	Prom. G. S. Ford
G. F. Cooke	M'Rae	S. J.	Whelpdale	Prom. T. Hastie
F. R. Smith	Doe d. Thomas and others		Morris	Eject. J. Sorrell
W. B. Cooper	W. H. Barry	S. J.	Sir I. L. Goldsmid, Bart.	Prom. Crowder and M.
Stephenson	Russell		Tubb	Covt. Collins and Rigley
S. B. Hamer	Wingate	S. J.	Pellew, knt.	Ca. Capron and Co.
C. Appleyard	C. G. Round		Gee and another	Ca. In person
S. M. Cooper	Richardson		Clifton	Prom. Gosling and Co.
Webber	Avis	S. J.	Nugee	Ca. Gregory and Co.
Sutton, Ewens, and Co.	Wilson		Westbrook	Repl. In person
Bessett	Eyre and another		Sutherland	Dt. Rogerson
Same	Brand		Smith	Prom. Busey, Hunt, and
J. Goren	Ablewhite	S. J.	Bunn	Dt. H. Evans [Co.
A. Dobie	Lewis and another	S. J.	Lewis	In person
J. H. Turner	Hillhouse		Rutson	Prom. C. Choppin
Carlon and Haynes	Nicoll and another	S. J.	Holbeck	Ca. Pike
S. B. Jackson	Scott		Hilliard	Dt. J. F. Walker
H. Walker	Walkinshaw	S. J.	Freebody and another	Ca. J. C. Govett
Stafford	Doe d. Richardson and others		W. Sharpe and others	Eject. Driver
E. G. Bradley	Ellis		Cathie	Prom. H. Z. Jarvis
Wenham	Wenham		Bowman	Dt. and Drue. Blenkerne
Davies, Son, and C.	Walker	S. J.	Ford	Ca. G. S. Ford
J. H. F. Lewis	Mason		Harrison	Prom. G. Wetherfield
Cox, Sons, and W.	Doe d. Flight		Woods	Eject. Hensman
Pain and Hatherley	Ferguson		Sherwood and another	Dt. Wilkinson and G.
A. Cocker	Des Jardens		Wright	Prom. T. Barton
Bisgood	Hetherington		Wetherell, clk.	Dt. C. Barnard
Walsh	Doe. d. Oliver		Burge	Eject. Harpur
H. W. Cross	Cattlin	S. J.	Hills and others	Ca. Southgate
Froggatt	Wadlow		Price	Prom. Freeman and Co.
Addis and Guy	Poulter		Thomson	Prom. Baxters
M. Lewis	Osborn		Wilkins	Tres. Adams
Carlon and H.	M'Lean		Philips, clk., &c.	Prom. Thompson and D.
Adamson	Adamson	S. J.	Long	Tres. Hume and B.

Court of Exchequer.

Middlesex.

Lofty and Co.	Wakley	S. J.	Cooke	Ca. Catlin
Oliverson and Co.	Doe. d. Peacock	S. J.	Frere	Ejt. Vizard and Co.
J. Taylor	Weiss	S. J.	Lumley	Pro. E. Jennings
Wright and K.	Watts	S. J.	Clarkson	Pro. Pontifex and M.
Cajes and S.	Dearden	S. J.	London and North West. Railway	Ca. Parker and Co.
Yates and T.	O'Connor	S. J.	Ballantyne and another	Ca. Reed and Co.
W. Moss	Parker, P. O., &c.	S. J.	Kearney	Pro. Lendbitter
Rickards	Harman and another	S. J.	Hope and others	Trov. Walker
Elderton	Elderton and another	S. J.	Lack and another	Issue, Asprey — Brooksbank
Westmacott and Co.	Long	S. J.	M'Cleane	Pro. Benbow
Abrahams	Goodman	S. J.	Lord Cecil	Pro. Rickards and W.

Karslake and Co.	Gravatt	S. J.	Ward, Esq.	Ca.	Elmslie and P.
S. B. Abrahams	Braham	S. J.	Pugh	Pro.	Symes and Co.
Spencer	Beauclerk	S. J.	Copeland	Pro.	Brundrett and Co.
Gregory, F., and Co.	Fox and others	S. J.	Wyld	Pro.	Coppock
Same	Doe dem. Baker and others	S. J.	Jones	Tres. and Eject.	T. W. Rush
Jaques and Co.	Scarvin, P. O.	S. J.	Smith, P. O.	Pro.	Williamson and H.
S. B. Vaughan	Watkins	S. J.	Fitzgerald	Pro.	Bush and M.
Nethersole	Manning	S. J.	Wilkin	Case,	In person
Walter Justice	Williams	S. J.	Deacon and others	Pro.	Tilleard and Co.
Willoughby and J. W. Fisher.	Cobb		Harley	Pro.	H. Hammond
	Turgand and another, assignees, &c.	S. J.	Lawrence and another	Pro.	Dickson and O.
Cornthwaite	Cornthwaite		Smith	Dt.	Keightley and Co.
Fourdrinier	Homersham	S. J.	Wolverhampton Water Works Co.		D. Grey
Bell and Co.	Burdis, (P. O.)	S. J.	Stamp	Pro.	G. Henderson
W. H. Smith	Smith	S. J.	Fitzgerald, Bart.	Pro.	Sherman and S.
W. H. Rymer	Grace	S. J.	Miller	Pro.	Horn
Fielder and Co.	Martin and another	S. J.	South-Eastern Railway Company	Pro.	Tilleard and Co.
Ranyard	Haddan		M'Carthy	Dt.	Keane
Miller and Horn	Wilson and another	S. J.	Cope and another	Dt.	Mardon and P.
Wade and P.	Troup	S. J.	Clayton	Covt.	Clayton and Co.
H. G. Robinson	Doe d. Wheeler		Scott	Eject.	E. Hodgkinson
Same	Wheeler		Stiles	Replevin,	Same
Taylor and Co.	Bell and another, assignees, &c.	S. J.	Leveson	Trov.	Dickson and O.
Same	Wright	S. J.	Jackson and another	Dt.	Duncan
Irwin and T.	Hutchins	S. J.	London and South Western Railway Co.	Ca.	Bircham and Co.
Milne and Co.	Steiner	S. J.	Heald and others	Case,	Hill and Heald
Gregory, F., and Co.	Scarisbrick and ors.	S. J.	Kennard and another	Tro.	Kilgour and P.
L. H. Braham	Jones		Anderson	Tro.	Skinner
Capes and S.	Doe d. Otter		Sparrow	Ejt.	Jones and Sons
Wilkinson and G.	Hazlewood	S. J.	Whelpdale	Pro.	T. Tyrrell
Wright and Co.	Holland and others	S. J.	Belfield	Pro.	Druce and Sons
C. Lewis	Pattison		Lawton	Pro.	Chubb
J. Harrison	Haywood		White	Pro.	R. Hodgson
Carritt and O.	Alport		Tassell, jun.	Dt.	T. Brough
Cullington and Co.	Wrenn		Wellbeloved	Dt.	W. H. Garry
Carritt and O.	Blasson & others, extrix., &c.		Gillett	Covt.	C. Gaines
W. Mess	Ryalls		Sanderson, admix., &c.	Covt.	A. Duncan
T. R. Rush	Driver and another	S. J.	Governor and Company of Copper Miners	Pro.	Tilson and Co.
W. Melton	Stocken		Earl of Limerick	Dt.	Bockett
T. H. Welsh	Reading		Wescoe	Tres.	Rippingham and R.
C. Barnard	Lee (pauper)		Walter	Tres.	Warneford
Edwards and P.	Moffatt and another		Beaumont	Pro.	Clark and Co.
C. Lewis	Westley		Bonsor, Esq.	Ca.	Abbott and Co.
N. J. Whitcombe	Whitcombe		Boscer, extrix., &c.	Pro.	Knox
A'Beckett and Co.	Morris and another		Ker	Dt.	In person
T. Martin	Broom	S. J.	Eastern Counties Railway and another	Tres.	Duncan
Tepper	Williams		Townshend	Dt.	Jones
Welborn	Gutteridge		Bowerman	Ca.	Hilleary
S. Smith	Ford		Elliot and others	Trov.	C. Brown
Hodgson	Seaver		Bird and another, sued &c.	Ca.	Kempster
Bell, B., and Co.	Holmes	S. J.	Ralli	Pro.	Crowder and M.
C. A. Brookfield	Hounsfield, P. O., &c.		Lee	Pro.	Sudlow and Co.
Futvoye and S.	Broadwood and others		Ashton	Ca.	Devonshire and W.
R. Simpson	Morrish		Furrian	Pro.	A'Beckett and Co.
G. K. Corfield	Corfield		Hudson	Dt.	Jenkinson and Co.
S. Hamilton	Bennett		Martin	Trov.	Humphreys and Co.
R. Hare	Kent		Farrow	Covt.	Aikinson
Burbidge	Hemming		Lord Ingestre	Pro.	Younghusband
J. and H. Cole	Williams and another		Davies	Pro.	Few and Co.
White and Co.	Doe d. Dean and Chapter of Westminster	S. J.	Campbell, clk., and ors.	Ejt.	Pitman
A. Mayhew	Goodchap		Webb	Pro.	Gant
Same	Harvey		Tingey	Trov.	Harrison and D.
T. G. Lander	Walker		Collick and another	Pro.	Bright and Lane
Rickards and W.	Evershed		Langridge and another	Covt.	Wilson
Same	Lyons		Paine	Pro.	James

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, NOVEMBER 25, 1848.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

THE SESSIONS-BAR, AND ATTORNEYS.

THE rapid increase in the number of the Bar has had the effect of crowding every Court, and every department of practice, with competitors for legal employment, infinitely far beyond the possibility of demand. We apprehend that the irregularities and mal-practice which have too often taken place, particularly at some of the Sessions, may be traced to the pressure of untoward circumstances on the eager candidates for forensic business, and which, in some rare instances, have led to an actual disbarring of the offenders. Whilst the numbers of the Bar have thus increased and multiplied, a large proportion of the business of the Superior has been transplanted to the *Inferior* Courts, and many of the Junior Bar have consequently sought for the profitable exercise of their talents before tribunals in which formerly attorneys and solicitors were alone the advocates.

In small and distant districts to which it was inconvenient or expensive to travel, and where the harvest was small, the London Bar never attended, but left the field to be cultivated and reaped by the local solicitors, or on special occasions by provincial barristers. The solicitors of the town or vicinity, who possessed a sufficient amount of forensic ability, made it their business to master all the law that was required for the purpose, and whilst as general practitioners they prepared the case for adjudication, they were also enabled efficiently to address the Court, and state all that was necessary for their clients' advantage. It must be admitted that the attorneys and solicitors who had long exercised this right or privilege,—who had undergone an expensive probation,—had devoted their time according to the requirements of the statute,—paid large stamp duties, and passed a strict examination, as well into their legal capacity and fitness, as their conduct and character;—who, moreover, had, in many instances, purchased an established practice, or devoted many years to its formation,—felt some dissatisfaction when the rewards and honours which they had acquired as the result of their long-continued exertions were suddenly attempted to be taken from them by strangers: they were not unnaturally aroused to oppose the inroad, and can it be wondered at if their indignation was a little excited?

We are aware of a doctrine which has occasionally been glanced at even from the Bench, and is doubtless much cherished by those whom it concerns, that the public must submit to no small expense and inconvenience in order to provide a *Nursery* for the rising talent of the Bar. That which was formerly done in the Inns of Court by competent instruction, by learned readings, by hard study, by mootings, exercises, examinations, by attendance on the Courts, and many years of preparation, must now be supplied at the expense of the suitors or the public, in the practice of the minor Courts. But it is a serious question whether this course can be justly pursued, and whether the public, when the propo-

sition is sufficiently understood, will permit it to be continued. Take the following by way of example :—

A poor man in the country has a case to bring before an Inferior Court. He knows an attorney whose integrity is well tried, and who, though without any showy talent, is an able and practical man, capable of telling "a round unvarnished tale." He can have the services of this gentleman for a small sum. But he is told that a certain number of gentlemen recently called to the Bar, have resolved to visit that part of the country, and that the Bench, whether single-seated, (according to Bentham,) or dividing responsibility amongst many, determine, according to the usual custom, to hear only these junior barristers. Still the experienced attorney must be employed in preparing the case, examining the witnesses, securing their attendance, and appearing in Court. His time will be employed even to a greater extent, for instead of briefly stating the case to the Court from his own notes, he must prepare a formal brief for the barrister, and endeavour to possess him of the case, and attend him to explain the details. What, it may be asked, has the client gained by being "encumbered with the help" of the foreign advocate? The expense has been at least doubled.

In the metropolis, and in large towns and cities where the Sessions' business is extensive, the members of the Bar have ever found a ready welcome, and their interests are cheerfully promoted by the other branch of the profession. It will be well for the junior members of the bar duly to consider, whether it is either just or expedient to insist on the full extent of their privileges, supposing them to be ever so indisputable. Hitherto it has been considered as an inflexible rule of the Bar that there should be no solicitation of business, and it becomes a grave question touching the honour and dignity of that branch of the profession, whether they should enter into competition with attorneys, and seek either by direct or indirect means to obtain employment as advocates, and coerce the delivery of briefs which it is palpably the interest of the attorneys to prepare, whenever the importance of the case requires it, or the means of the client will justify the expense.

The editor of a contemporary journal,[a] (instituted about five years ago, and occasionally assuming to be the organ of the profession,) has noticed the recent contest between the Quarter Sessions' Bar in certain parts of Devonshire and the attorneys and solicitors who had previously been in the habit of acting as advocates. After some introductory remarks, the learned editor thus proceeds :—

"The complaint is, that the Bar claims a privilege which belongs to it, and which has been given to it *time out of mind* in all Courts of Record, and especially in *all* Quarter Sessions' Courts.

"*Is* such a complaint right or rational? Does it come with *a good grace* from attorneys, who have privileges of their own, which they guard most jealously? For instance, the complainant attorneys of Devonport would to a man object to a sham lawyer, a writing clerk, or even an articled clerk, being admitted to audience in the County Court; they claim there the privilege which belongs to them as attorneys, and demand the exclusive audience the law has given *them?* With what justice, then, can they complain of the Bar for doing that in the Quarter Sessions' Court, which they themselves do in the County Court?"

Let it be recollected that the attorneys do not, like the barristers, claim either exclusive or *pre*-audience. They require only to continue the exercise of their right or privilege to be heard in behalf of their clients by whom they are personally retained, and this not in the Superior Courts at Westminster, but in certain Inferior Courts, in which, until lately, no barristers appeared, and where bnt few even now attend. Surely there is a material difference between the claim of a solicitor to *continue* the exercise of his professional advocacy before justices of the peace, in which he had previously been uninterrupted, and the illegal proceedings of those unqualified persons who are expressly prohibited for the public security from practising in any way before the Courts or magistrates. As well might it be said that a general practitioner in the medical profession, who has established himself in a small town and gained by his skill and attention the confidence of the inhabitants, must forego the most important branch of his practice as soon as a Fellow of the College of Physicians makes his appearance,—or (mark the alternative) all the notorious quacks in the country may rush in without restriction!

It is then further urged that,

"If the Bar has been privileged to exclusive audience in Courts of Record, the attorneys have the privilege, on their part, of requiring that the Bar shall not accept briefs from any but themselves. If the attorneys say, 'We will not give briefs to any man who asserts his

[a] The Law Times of 18th Nov., 1848.

privilege of audience against us,' the Bar may be compelled, in self-defence, to say, 'Then *we will take briefs without the intervention of attorneys.*' It is not certain which would lose the most in such a struggle; but certainly the loss would not be all on one side."

Thus it is plainly hinted — we might say threatened—that if the attorneys who feel aggrieved, should in any case withhold briefs from those who have invaded their privileges, the barristers may accept their instructions from the parties or suitors themselves. But who, it may be asked, will prepare the briefs, and collect and arrange the evidence? Will the London barristers and their clerks do these things? Can they (not being on the roll of attorneys) issue writs and subpœnas, and make the other essential preparations for the day of trial? This would be a combination of the office of barrister and attorney which we have always understood to be contrary to the whole policy of the Bar, and practicable only by the association in partnership of barristers and attorneys on the plan which prevails in America and many of our own Colonies. Our contemporary very recently wrote most urgently against any approach to such a professional union or combination. Has the reception which certain junior barristers met with at the Devonport Sessions altered his views?

We are aware that the Court of Queen's Bench has held, that where *four* barristers are in attendance at Quarter Sessions, the magistrates *may* refuse to hear any but those learned gentlemen.[b] Until this decision be set aside, the Bar may insist upon it as conclusively regulating the practice. It is another question whether they will act wisely in availing themselves of it; and it is open, of course, to the attorneys, on behalf of their clients, to moot the question at every Court of Sessions which may be held, for, we take it, one Court of Sessions is not bound by another. It may also, perchance, happen that one or two of the four counsel may not possess the confidence either of client or attorney in regard to capacity, learning, practical knowledge, or discretion, and injustice may be done. Where the client and his attorney have a large field of choice, they are not entitled to complain if they make a mistaken selection.

Be it observed, also, that our contemporary confines his view to this single case of Sessions' grievance in the rural districts in which he is interested, and talks of the ill-grace of the objection made by the attorneys, but he will find that this point of advocacy is but one item (though an important one) in the long list of matters which have to be adjusted between certain members of the Bar and the attorneys. To many important ministerial and several minor judicial offices (a catalogue of which will hereafter be given) the attorneys were wont to be appointed, and of which they are now deprived. They feel they have been unjustly curtailed as well of *honour* as of emolument. They were told in both Houses of Parliament, in the Sessions before the last, by eminent dignitaries of the law, that from the limited nature of their education, and their course of practice, they were not qualified for the offices which were then under consideration,—the judgeships of the County Courts, many of which they had held and ably executed. Restricted in the exercise of opportunities to evince their learning and ability,—deprived of the inducement to superior exertion, and the acquisition of superior knowledge,—they are cavalierly told of their unfitness to hold the very offices from which they are denied the right of qualifying themselves. This appears to be as impolitic as unjust, for it is clearly of the greatest moment to the interests of the public, in the due administration of justice, that the attorneys and solicitors, to whose skill and integrity so much of the vast and complicated transactions of society is necessarily confided, should be encouraged to the amplest exercise of their powers and faculties, in order to secure the maintenance of a respectable station and the highest character.

The very large and general question of the "province of the Bar," has been raised by the *Law Review* in its last number, and therein the rights of the attorney in regard to his appearing as an advocate, are bounded by the narrowest limits. There are, we conceive, some important errors in the statement and conclusions there put forth, but on the whole, it brings the question fairly before the profession and the public; and as we entertain a different view from the learned writer, we shall take an opportunity of entering fully on the several points involved in the question. We think that the attempt to limit the right of advocacy in all Courts to members of the Bar, cannot be sustained with reference either to the true interests, of the Bar itself,—still less of the profession as a whole,—and above all of the community in general.

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[b] *The Queen* v. *The Justices of Denbighshire*, 32 L. O. 323.

THE PALACE COURT MONOPOLY.

As we intimated, at the close of some observations on the proposed alterations in the constitution of the Southwark Court of Record, in the last number, the right of an attorney of the Superior Courts, to be admitted on the Roll of the Palace Court, under the Attorneys' and Solicitors' Act, (6 & 7 Vict. c. 73,) has been brought formally under the consideration of the Court of Queen's Bench, by an application for a rule to show cause, why a mandamus should not issue to the judges of the Palace Court to admit Mr. Philip Jacquet to practise in that Court.

The local jurisdiction of the Palace Court, as most of our readers are aware, extends over a large proportion of the metropolis, and the business, which as already suggested has considerably increased since the County Courts' Act, (9 & 10 Vict. c. 95,) came into operation, is exclusively confined to six attorneys and four barristers. This monopoly was created by a charter granted in the 16th year of the reign of Charles the 2nd; and the question now submitted to the Court of Queen's Bench,—and upon which the opinion of a Court of Error will in all probability ultimately have to be taken—is, whether the exclusive privilege of practising in the Palace Court, has not, so far as regards attorneys, been abolished by the act for consolidating and amending the Laws relating to Attorneys and Solicitors.

The point now to be determined, it appears to be conceded, depends mainly upon the construction the Common Law Judges may put upon the enactment contained in the 27th section of the statute, 6 & 7 Vict. c. 73, which expressly provides:—"That every person who shall have been duly admitted an attorney of any one of the Superior Courts of Law at Westminster shall be entitled, upon the production of his admission therein, or an official certificate thereof, and that the same still continues in force, to be admitted as an attorney in any other of the said Courts, or *in any Inferior Court of Law* in England and Wales, upon signing the roll of such other Court, but not otherwise, and shall thereupon be entitled to practise as an attorney therein in like manner as if he had been sworn in and admitted an attorney of such Court." This enactment, it may be remembered, incorporates the provisions of the 1 Vict. c. 56, s. 4, enabling an attorney of one of the Courts of Law to practise in the others, and the 1 & 2 Vict. c. 45, which required the attorney of one Court, before he practised in another, to sign the roll of such other Court.[c] The question is, whether it entitles an attorney admitted in the Superior Courts, to claim his admission to practise in a chartered Court like the Palace Court, as of right. The subject was very fully discussed and considered in the case of *The Queen* v. *The Lord Mayor of London*,[d] where nearly the same point arose. In that case, Mr. W. H. Ashurst perseveringly endeavoured to open the Lord Mayor's Court of London to the profession. He obtained a writ of mandamus, reciting that being an attorney duly admitted of the Courts of Law at Westminster, and of the High Court of Chancery, he had, since the passing of the 6 & 7 Vict. c. 73, duly produced his admission properly verified to the defendants, and requested to be admitted an attorney "of a certain Inferior Court in the city of London, presided over by the defendants, called the Lord Mayor's Court, on signing the roll of the said Court," as directed by the act, but that the defendants refused to admit him. To this mandamus there was a return, stating the Court to be an immemorial Court, with several immemorial and peculiar privileges, differing materially from the forms and practice of the Superior Courts at Westminster, and that there had been immemorially four clerks or attorneys only, who enjoyed the exclusive right of practising in that Court, some of whose duties were peculiar, and that their offices were the subject of purchase and sale,[e] and that there was not, and never had been, a roll for the applicant to sign, wherefore they could not and ought not to admit him an attorney of the Court. To this return there was a special demurrer upon which the case was argued, the argument resolving itself into two points,—first, whether the return showed the Lord Mayor's Court to be an Inferior Court within the meaning of the act of parliament; and secondly, whether the non-

[c] See Maugham's Attorneys' and Solicitors' Acts, p. 29, note *y*.

[d] Reported in the 16 Law Jour., p. 185, Queen's Bench, N. S.

[e] It was stated, that since 1789, the office of attorney in the Lord Mayor's Court was obtained by purchase, and held for life, subject to removal for misconduct, with the right of alienation upon payment of a fee of 60*l*., and that three of the clerks held by this title, and had paid sums varying in amount from 3,120*l* to 9,000*l*.

existence of a roll was an answer to Mr. Ashurst's application, as indicating that the act was not intended to apply to Inferior Courts which had not a roll upon which the names of attorneys practising in those Courts were inserted. Upon the first point, the Court of Queen's Bench unanimously decided, that the words of the statute 6 & 7 Vict. c. 73, were applicable to all Inferior Courts in England and Wales, and therefore included the Lord Mayor's Court, unless that Court could be considered a Superior Court; but the Court thought the Lord Mayor's Court had all the incidents which distinguished an Inferior from a Superior Court, and was within the plain terms of the act of parliament, whether the legislature meant to include it or not. As to the objection, that the Lord Mayor's Court had not a roll upon which the attorney might sign his name, after noticing that if this objection were to prevail a large proportion of the Inferior Courts throughout the kingdom would be taken out of the operation of the 27th section, the Queen's Bench disposed of it by the observation, that "the statute must have a reasonable construction: in Courts where there is already a roll, the attorney must sign that roll; and in Courts where there is as yet no roll for the attorney to sign, a roll must be procured." Upon the ground, therefore, that the return afforded no sufficient answer to the mandamus, the Court of Queen's Bench gave judgment for the Crown. A writ of error was then sued out, and in the Exchequer Chamber the matter was argued upon grounds more technical than those insisted upon in the Court below. It appeared from the return, that the Lord Mayor's Court was a Court of Equity as well as of Law, that it was a Court of criminal jurisdiction, and that, upon the information of the Common Serjeant, freemen may be disfranchised in it, and that attorneys practise in it, not as attorneys, but as holders of a corporate office, in which, after admission, they may practise as attorneys. Under these circumstances, it was urged as a fatal objection to the writ of mandamus that it described the Lord Mayor's Court as "a certain inferior Court within the City of London," but did not follow the words of the 27th section, by describing it as "an inferior Court *of law*." This argument prevailed in the Court of Error, and the judgment of the Court of Queen's Bench was reversed[f] upon a point which was never taken or considered in that Court.

Many of the technical difficulties existing as regards the Lord Mayor's Court, do not arise upon the application for admission to practise in the Palace Court. Upon the motion for a rule for a mandamus, Mr. Justice Patteson particularly inquired whether there was a Roll in the Palace Court, and was answered in the affirmative. It would also seem to be tolerably clear, that whatever may be said of the Lord Mayor's Court, the Palace Court is "an inferior Court of law." It is to be hoped, therefore, that in this case no technical objections will interpose to prevent the Court to which it may be ultimately submitted, from canvassing the construction of this act, and giving a judicial exposition of the scope and effect of the enactment which has suggested the application. The public, no less than the profession, are deeply interested in the determination of the question, and, whatever may be the result, Mr. Jacquet deserves well of his professional brethren for taking upon himself the anxiety and responsibility of doing battle against the giant of monopoly, and putting the rights of the whole body of legal practitioners in a fair train for judicial decision. Our only regret is, that the determination of the question as to the right of attorneys to practise in the Palace Court, could not, in any event, throw the Court open to the whole profession. The four counsel, who have purchased their situations in this Court, would still be entitled to exclusive audience, however the number of attorneys entitled to practise may multiply. Whilst this restriction exists, the tribunal can scarcely become popular or extensively useful. No doubt, the speediest and most effectual mode of getting rid of the nuisance would be by a short act of parliament; but before this is applied for, or can be obtained, the subject should be thoroughly discussed and understood, and its importance appreciated.

[f] Although temporarily defeated in his attempt to open the Lord Mayor's Court, there is good reason to believe that Mr. Ashurst will be finally successful. We understand the Corporation of London have now under their consideration the claims of the attorneys of that Court to compensation, with a view to opening it to the whole profession; and that when the place held by Mr. Carter, one of the attorneys of the Lord Mayor's Court, recently became vacant, it was filled up with an express reservation as to the claim for compensation, if the Court should be opened.

TRANSFER OF MORTGAGE STAMP.

In *Humberstone* v. *Jones*, 16 Law Journ. Exch. N. S. 293, it was determined that a deed stamp was required on the transfer of a mortgage, where any *additional security* or *power* was inserted in the deed. This decision being contrary to several previous authorities, and doubt and inconvenience being likely to arise, the Council of the Incorporated Law Society applied to the Solicitor of Stamps, and were informed that the Lords of the Treasury had authorized the Board of Stamps to remit the penalty on affixing an additional stamp in cases included in the principle of that decision.

It appears from the answer to the memorial of Mr. Chamberlain, a solicitor of Portsea, which we printed last week, (p. 50, *ante*,) that the Commissioners now decline to remit the penalty. Our correspondent observes that—

"The Commissioner's answer is to this effect: that when, previous to *Humberstone* v. *Jones*, attorneys have only paid on transfer the *ad valorem* on the further sum, and in consequence of that revision seek to have the 35*s.* stamp imposed, in addition to such *ad valorem* duty; they must pay a penalty of 5*l.* before it will be done, which penalty *will not be remitted*. I presume, sir, that in my case the penalty will be lost, but I am quite sure that influential representation in the proper quarter will have the effect of preventing the infliction of such unmerited loss; it is bad enough to impose a penalty, that is, a pecuniary punishment, when wrongly stamping originates in a *bonâ fide* error; but to impose one when not only an attorney is justified in stamping a deed in a certain way, but when it is a question if he would have a right to charge any larger amount of stamp duty, is, in fact, to punish by an *ex post facto* law, and is really unmerciful. We are all of us too well acquainted with the cruelly partial operation of the stamp laws, especially in cases of small, and comparatively small mortgages: and in the absence of contrary experience, would expect that it would be the endeavour of the executive to do everything possible to modify rather than aggravate such partial operation. One has the more hope of relief in these cases, as the attorneys, if they complain, are fighting the battles of the public, not their own."

We should recommend our correspondent to send a memorial to the Treasury through the medium of his county or borough member. It is not improbable that the time has elapsed within which the Commissioners deemed themselves authorized to remit the penalty, and the application should be to extend the time.

NOTICES OF NEW BOOKS.

The Judges of England, with Sketches of their Lives, and Notices connected with the Courts at Westminster from the time of the Conquest. By Edward Foss, Esq., F. S. A., of the Inner Temple. London: Longman & Co. 1848. Vols. 1 & 2. Pp. 432, 538.

The course of reading of lawyers, especially of those who are actively engaged in the important business of the profession, is for the most part confined to works bearing on the discharge of their professional duties, and the public occurrences of the day. Their hours of literary relaxation are "few and far between." They may be tempted indeed, by the variety and the excellence of many periodical miscellanies, to indulge in occasional readings, but can rarely encounter the perusal of volumes of any considerable magnitude. It has been our good fortune, however, of late years, to notice several important contributions to the stock of Legal Biography—a department of literature of the most attractive kind to all classes of readers,—and happily the memoirs of successful lawyers usually abound with matters of general as well as professional interest. We welcome, therefore, with peculiar earnestness these first two volumes of Mr. Foss's work,—comprising much of the history of the law from the time of the Conquest, with the personal career of the learned and eminent persons by whom, from age to age, it has been administered and expounded, and comprehending within its scope not only all the important changes that have happened during many centuries in our judicial system, but the lives of those who were engaged either in upholding its principles and enforcing its maxims, or in altering and adapting them to the wants and necessities of society. The love of justice is a strong and inherent feeling in every Englishman; the judges of the land who administer it have always been held in the highest veneration, and the origin and progress of those rules and principles which constitute our Common Law, "the perfection of reason," are subjects of the greatest attraction, not to lawyers only, but to the whole community.

"When it is recollected," says Mr. Foss, "that the judges of the land are by the nature of their office in some respect the representatives of Majesty, presiding in the judgment seat, and traversing the country in all the 'pomp and circumstances' of their position, interpreting the laws and administering justice

in the presence of multitudes; that the highest constitutional questions, as well as the minutest civil rights, are subject to their decision; that many of them have, from the most humble origin, been raised to their high station by their own industry, abilities, and character, selected from the élite of a most arduous and honourable profession: that every judicial act they perform, every opinion they offer, and every word they utter, is subject to the observation of their contemporaries, equally educated, and many of them equally competent to form a judgment; and that their intercourse on the circuits is not confined to their legal brethren, but extends over the highest and most intelligent branches of the community; it seems only a natural consequence that the rise and progress, the conduct and the character, the lineage and descendants of those who have pursued such a career, should abound with interest to all classes of society, as well those who are partakers in the benefits and are conversant with the history of their country's institutions, as those who are prosecuting the same studies and aspiring to similar honours."

It is further truly observed, that such an interest is not limited to the eminent names which dwell in the memory of the living, or which are known to them by the traditionary accounts of their fathers. "Nothing is looked for more eagerly, or enjoyed with greater zest, than those relations which illustrate the proceedings of the Courts in former times, which exhibit the character and habits of those who presided in them, and which supply the link of connection between ancient and modern practices, explaining customs still preserved, although their origin may have been forgotten." The work therefore cannot fail to be eminently interesting alike to the lawyer, the antiquary, the philosopher, the moralist, and the patriot.

Having thus noticed the peculiar importance of the subject-matter of these volumes, we proceed to consider the plan and arrangement which the author has adopted. It required the exercise of considerable skill and judgment to determine the best method of using the vast extent of historical and biographical materials which were to be brought together. In writing the Lives of the Chancellors of England the course was plain and simple. There could be only one Lord Chancellor at a time, and the strictly chronological order was evidently the only one to be adopted. So if the Lord Chief Justices had been the subject, the same plan might have been followed. But here were twelve or more judges all flourishing contemporaneously. To pursue the chronological course by a dozen different streams flowing at the same time was scarcely practicable. An alphabetical arrangement of the whole series would have been liable to the most serious objections. We think the author has steered a middle course with great skill and judgment. He takes the judges of each reign, and places them in alphabetical order.

"Preserving thus, (he says,) the chronological order, I have secured the utmost simplicity of reference to the judges who flourished under each sovereign, by arranging their lives alphabetically: so that all the judges of each reign appear in one list, and each individual is classed amidst his contemporaries. A separate alphabetical index is given to each volume, for facility of reference; and a general one will close the work, showing in what reigns each individual held office. Where judges have sat on the bench in more than one reign, their names, with the office they held and the year of their appointment, will appear in one order in each reign of their career, and their lives will be given in the last."

Mr. Foss, in addition to the biographical sketches, has, at the commencement of each reign, distributed the several judges who flourished in it among the different Courts in chronological order; and has given, under the title of "Survey of the Reign," some description of the nature and progress of each Court, and of the officers of the various departments, with short accounts of the Inns of Court and Chancery and their origin; of the serjeants and other advocates; and of the reporters and legal writers; adding whatever appeared interesting in the history of the time as connected with the judicature of the country; and collecting such illustrative anecdotes of Westminster Hall as seemed to demand a place. Thus each reign is complete in itself.

We shall have occasion at a future opportunity to notice some of the prominent parts of these reviews of the legal results of each reign. They are admirably written, and show great research and extensive learning. We would particularly call attention, as more than ordinarily interesting to lawyers, to the disquisitions of the author on the Terms in the reign of William the 1st—on the removal of the Courts in the time of William the 2nd—on the first Roll of the Exchequer and the presumed purchase of the Chancery under Henry the 1st—on the Rolls and the Chancellors in the time of John—and on the division of the Courts under Henry the 3rd.

We may judge of some of the difficulties with which the author had to contend in

collecting the materials for his work, when we consider, as observed in the Introduction,

"That the reigns are so distant, that little minute information or forensic anecdote can be expected; and the lives of those who flourished during the period can be distinguished by few incidents of individual character, nor can the parties themselves be always ascertained with sufficient marks of personal identity. The frequent absence of surnames; the constant combination of Christian names by the word "filius" or "fitz," with slight means to distinguish the families to which they belong: the common designation of men from the place of their birth, education, or preferment, and sometimes from their office, occupation, or profession, and the occasional adoption of two appellations by the same individual; are difficulties which those who are conversant with the records of the time will know how to appreciate; and it will perhaps excite some wonder, that out of 580 judges, regular and itinerant, comprehended in these two volumes, there are so few of whom I have not been able to collect something beyond the mere fact that they held the one or the other position."

It will not be uninteresting to many of our readers to be reminded, or informed, that the present author commenced his career in the profession as a solicitor, but at a time when it was not incompatible with members of that branch of the profession to be members also of one of the Inns of Court. The author, with several other eminent solicitors, his contemporaries, continue members of those ancient seats of legal learning, and the title-page accordingly bears the name of the Inner Temple. During his able and successful career in the second branch of the profession, Mr. Foss became one of the members of the Committee of Management of the Law Institution, at the time of its establishment in 1825, and co-operated actively throughout its progress down to the time of the grant of the present Charter in 1845. We cannot but take the opportunity of congratulating both the learned gentleman himself and his late brethren that at so early a period after his retirement he has been enabled to lay before the profession and the public this large and valuable portion of his important work on the Judges of England. We may look forward, we trust, at no distant period, for the continuation of his labours; but the plan which has been adopted renders each volume complete in itself.

CASE OF WILLIAM H. BARBER.

We noticed so long ago as the 13th of July, 1844, the investigation which had been made by a very respectable and intelligent solicitor, now a member of the Bar, and which resulted in his entire conviction of Mr. Barber's innocence. Some months ago we received a communication from Mr. Barber with a pamphlet, edited by a barrister of the Inner Temple, published at Sydney, and containing various documents and testimonials in Mr. Barber's favour, with a Report of the Law Society of that colony. In our number of the 15th July last, we gave the Report *verbatim*.

We are now truly glad to add that the Secretary of State for the Home Department has fully and anxiously considered the documents submitted to him, and has expressed his belief that Mr. Barber was free from any guilty participation in the frauds in question.

The following is the letter from the Under-Secretary to one of Mr. Barber's friends.

Whitehall, Nov. 10th, 1848.

"Sir,—I am directed by Secretary Sir George Grey to acknowledge the receipt of the several documents which you have transmitted to him in behalf of Mr. W. H. Barber, who was convicted at the Central Criminal Court in April, 1844, of being accessary before the fact to forgery, and sentenced to be transported for life.

"Sir George Grey desires me to inform you that those papers have received his full and anxious consideration, and that he has satisfied himself that there is sufficient ground to justify his advising her Majesty to grant Mr. Barber a free pardon, which is herewith enclosed.

"But while he has arrived at this conclusion, from a consideration of all the documents in his possession, comprising very material circumstances which have transpired since the conviction, Sir George Grey feels bound to add that he sees no reason to doubt that the verdict of the jury was warranted by the facts proved at the trial; and although he now believes Mr. Barber to have been free from any guilty participation in the frauds in which he was made the instrument, he thinks that greater prudence and caution on his part would have exempted him from the suspicion to which his conduct in the transaction in question naturally exposed him.

"I am, Sir, your obedient servant,
"G. Cornewall Lewis.
"A Stevenson, Esq., 19, Essex-street Strand."

We understand that Mr. Barber intends to apply for an early re-admission or renewal of his certificate as an attorney, and

has placed his case in the hands of Sir Fitzroy Kelly, whom he lately saw in Paris. What reparation will the Bank of England make for their mistaken prosecution?

NOTES OF CASES IN MICHAELMAS TERM.

CONSTRUCTION OF TIME POLICY.

A policy of insurance was effected upon a vessel called "the Susan," from the 25th Sept. 1843, to the 24th Sept., 1844. The vessel had been employed in trading between Madras and the Mauritius, and was conveying a large number of Coolies to the latter place, when she encountered bad weather, which so damaged her that she was at length abandoned by the master, and sold for the benefit of all parties concerned. The plaintiffs claimed as for a total loss. The defendant, who was an underwriter, amongst other pleas, pleaded, that the vessel was unseaworthy at the time when the risk commenced; and at the trial, which took place at Guildhall, before Mr. Justice Wightman, at the sittings after last Trinity Term, his lordship left it to the jury, whether the vessel was seaworthy on the 25th of September, 1843, for the remaining portion of the voyage she was then performing on her way back from Trincomalee to Madras? The jury found for the defendant on this point, and a rule was afterwards moved, calling on the defendant to show cause why judgment should not be entered for the plaintiffs, *non obstante veredicto*, upon the ground that no warranty of seaworthiness was expressed or implied in a time policy. The distinction between a time policy and a policy upon a particular voyage was said to arise from the circumstance, that in a time policy, in most cases, the owner does not know where the vessel is, or whether or not it is seaworthy, and the underwriter knows that it must of necessity have been exposed to considerable risks; but in the case of an insurance upon a voyage, the owner has that knowledge, and it was therefore reasonable that a warranty of seaworthiness should be implied. The Court granted a rule *nisi* on this point. *Small and others* v. *Gibson*. Queen's Bench, 8th Nov.

PRIVILEGED COMMUNICATION.

After a cook had left the service of Mrs. Slade, (the wife of a gentleman at the Bar,) and gone into the service of a Mrs. Malcomson, the latter called upon Mrs. Slade, and inquired, in reference to the cook, if Mrs. Slade considered her "perfectly honest," to which Mrs. Slade replied "Certainly not." The cook brought an action against Mr. Slade, and had a verdict with 40*s*. damages. A rule was moved to enter a nonsuit, on the ground that the communication from Mrs. Slade to Mrs. Malcomson was privileged. Rule *nisi* granted. *Gardner* v. *Slade*. Queen's Bench, 8th Nov.

COUNTY COURT PRACTICE.

A plaint was entered in the County Court of Otley, Yorkshire, and a summons was issued on the 15th of June, requiring the defendant to appear on the 29th of June. Particulars were delivered at the same time as the summons, which claimed 20*l*. as the price of a horse. On the 24th of June a notice was served by the clerk of the County Court, on behalf of the plaintiff, that the case would be tried by a jury. On the 29th of June the parties appeared, and the jury were sworn; but, by consent, the case was referred to arbitration. It afterwards appeared that the arbitrator refused to take the case; and on the next court (the 31st of July) the case was tried as undefended by the judge alone, without a jury. Upon a motion for a prohibition, it was contended that where a jury had been ordered the judge had no jurisdiction himself to try the matter of fact; and secondly, that, the matter having been referred to arbitration, the case was entirely out of Court. The 69th section of the act of the 9 & 10 Vict. c. 95, declared that the judge should be the sole judge in all actions, and should determine all questions, as well of fact as of law, unless a jury should be summoned, and then the jurisdiction of the judge was excluded. The next section of the act declared, that in all actions where the amount claimed exceeded 5*l*., it should be lawful for the plaintiff or the defendant to require a jury to be summoned. In the present case a jury had been required by the plaintiff to be summoned, and therefore a jury having been ordered, the judge had no right himself to try the case without the order being rescinded. The Court granted a rule to show cause. *Scriven* v. *Brighton*. Bail Court, Nov 6.

CERTIORARI TO REMOVE INDICTMENT.

An indictment was preferred at the last Quarter Sessions for Devon, against Mr. Adams, an attorney at Totness, for stealing a poor-rate book. Upon an affidavit of Mr. Adams that the charge against him had been discussed in the local newspapers, and a prejudice created, and that he was anxious to have the assistance of counsel of eminence and experience attending at the assizes, Mr. Justice Patteson granted a rule to show cause why a certiorari should not issue to remove the indictment, *Reg.* v. *Adams*. Bail Court, 6th Nov.

BILLS OF EXCHANGE UNDER £20.

The question whether a bill of exchange under 20*l*., is within the 129th section of the County Courts Act, (9 & 10 Vict. c. 95,) still

remains to be determined. That section enacts:—"That if any action shall be commenced after the passing of this act in any of her Majesty's Superior Courts of Record for any cause other than" (certain specified cases), "for which a plaint might have been entered in any Court holden under this act, and a verdict shall be found for the plaintiff for a sum less than 20*l.*, if the said action is founded on contract, or less than 5*l.*, if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs." But a doubt has been repeatedly expressed in the Court of Common Pleas, whether bills of exchange or promissory notes fall within this provision, the right of action on these instruments not arising in any particular locality. In *Butler* v. *Corney*, 17 Law Jour. N. S., p. 265, Ex., (cited *ante*, vol. 36, p. 501,) the Court of Exchequer expressly declined to give any decision on the point, but *Parke*, B., is reported to have said,—"that he should like to learn the grounds of the doubt referred to;" and upon this observation of Baron *Parke* having been read in a late case in the Common Pleas, *Maule*, J., said:—"In return I should like to know when the venue in an action on a bill of exchange was held to be local?" *Pouchie* v. *White*, Com. Pleas, 6th Nov.

REMOVAL OF REPLEVIN SUITS.—PRACTICE.

The County Courts Act, 9 & 10 Vict. c. 95, s. 121, provides, that in case either party to any action of replevin shall declare to the Court in which such action shall be brought, that the title to any corporeal or incorporeal hereditament is in question, or that the rent or damage in respect of which the distress shall have been taken, exceeds the sum of 20*l.*, and shall become bound, with two sufficient sureties, to prosecute the suit with effect, and without delay, the action may be removed before any Court competent to try the same in such manner as hath been accustomed. Upon an application to the Court of Exchequer under this section, for a certiorari to remove a replevin suit from the County Court, the Court of Exchequer refused to entertain the application, upon the ground that it should have been made to a judge at chambers, and not to the Court sitting in Banc, as the expense was thereby considerably increased. *Bowen* v. *Evans*, Exchequer, 18th Nov.

ADDITION TO SENTENCE OF IMPRISONMENT.

It was contended, upon a writ of error, argued last Term, that on a conviction for perjury, the Court of Queen's Bench did not possess the power of making an addition to the sentence of imprisonment, by ordering that the defendant should find security for future good behaviour and to keep the peace. After taking time to consult the journals of the House of Lords, the Court of Error was unanimously of opinion that the Court of Queen's Bench had power to order a defendant convicted of perjury to find security for his good behaviour. The judgment of the Queen's Bench was therefore affirmed. *Richard Dunn* v. *The Queen*, Exchequer Chamber, 14th Nov.

MASTERS EXTRAORDINARY IN CHANCERY.

From Oct. 24th, to Nov. 17th, 1848, both inclusive, with dates when gazetted.

Baddeley, Thomas Bernard, Newport. Nov. 17.

Campbell, John Archibald, Edinburgh, for Scotland. Oct. 31.

Daubeny, William, Cirencester. Nov. 17.

Holt, William James, Gloucester. Oct. 24.

Ollard, William Ludlam, Upwell. Nov. 17.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Oct. 24th, to Nov. 17th, 1848, both inclusive, with dates when gazetted.

Bagshaw, John, John Stevenson, and William Edward Lycett, Manchester, Attorneys and Solicitors. Oct. 27.

Carr, Robert, and John Nettleton, Wakefield, Attorneys and Solicitors. Nov. 17.

Palmer, Hanslip, and Robert Arthur Ward, Upwell, Attorneys. Nov. 14.

Wade, William Thomas, and William George Pennington, 17, Serjeants' Inn, Fleet Street, Attorneys and Solicitors. Oct. 24.

Wetten, John Luke, and Arthur Ellis, 48, Conduit Street, Hanover Square, Solicitors. Nov. 10.

PERPETUAL COMMISSIONERS.

Appointed under the Fines' and Recoveries' Act.

Chaplin, John Clarke, Birmingham, in and for the counties of Warwick, Stafford, and Worcester. Nov 14.

Coombs, Thomas, jun., in and for the county of Dorset. Nov. 17.

Whitmarsh, Henry, Rye, in and for the county of Sussex. Nov. 10.

RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Vice-Chancellor of England.

Rubery v. *Morris.* July 29, 1848.

DISMISSAL OF BILL.—PAUPER COSTS.

Where a bill of dismissal by plaintiff is against a pauper defendant, such defendant is entitled to dives *costs and not* pauper *costs.*

In this case, the defendant Morris had been admitted to defend in *formâ pauperis*, and in January, 1844, the plaintiff obtained an order for dismissal of the bill, with pauper costs; in January, 1846, this order was on motion varied, by omitting the word "pauper," and the Master was then directed to tax the costs, having regard to the order admitting the defendant to defend as a pauper. He accordingly taxed the costs as pauper costs, and a petition was now presented for liberty to except to the Master's certificate, on the ground that he ought to have taxed the costs as "dives" costs, and not "pauper" costs.

Mr. *Rolt* and Mr. *Eddis* appeared on the petition, citing *Stafford* v. *Higginbotham*, 2 Keen, 147; *Wallop* v. *Warburton*, 2 Cox, 409; *Roberts* v. *Lloyd*, 2 Beav. 376.

Mr. *James*, contrà, urged, that if the defendant were allowed to have any other than pauper costs, the order allowing him to defend as a pauper, would be a mere nullity. The pauper could not be charged for fees to solicitor and counsel, why then was he to put full costs in his own pocket? He cited *Denn* v. *Russell*, 1 Dick. 427.

The *Vice-Chancellor* said, the plaintiff had obtained an order that the bill should be dismissed with pauper costs; that did not appear to him to be a just order, but as the defendant had been admitted to defend in *formâ pauperis*, he thought it right that the taxing officer ought to consider that circumstance when he taxed the costs. Now, nothing could be stronger than the way in which the plaintiff put his case; he had come to the Court, acknowledging that he had no case at all, and had moved to dismiss his bill; under these circumstances it certainly appeared to him that he ought to pay full costs, and he should make the order accordingly.

Vice-Chancellor Knight Bruce.

Otter v. *Melvil.* Wednesday, April 19, 1848.

SETTLEMENT. — CONSTRUCTION. — WIFE'S FUTURE PROPERTY.

By a marriage settlement the intended husband and wife covenanted that the personal estate to which the wife should at any time or times during her coverture become entitled should be settled upon certain trusts. The trusts of a certain fund therein mentioned were declared to be the same as those declared respecting the future personal estate of the said intended wife. A sum of money to which the lady was absolutely entitled at the time of her marriage was afterwards paid: Held, *that this money was not bound by the trusts of the settlement.*

By the settlement made upon the marriage of the plaintiff and Elizabeth Melvil, dated the 12th of May, 1837, after reciting that on the treaty for the intended marriage it was agreed that all such personal estate as the said Elizabeth Melvil might at any time during her coverture with W. B. Otter (the plaintiff) become entitled to, should be settled upon the trusts thereinafter mentioned, it was declared that the trustees of the settlement therein named should stand possessed of 2,000*l.*, the property of the plaintiff, in trust for him for life, with remainder in trust for the wife for life, with remainder in trust for the children of the marriage, as the husband and wife, or the survivor of them, should appoint, and in default of appointment, in trust for the children of the marriage equally; and if there should be no child, in trust for the husband absolutely. The said W. B. Otter and Elizabeth Melvil then severally covenanted with the trustees that all and singular the personal estate, to which the said E. Melvil should at any time or times during her coverture become entitled, should be called in and converted into sterling money of Great Britain, and invested in the names or name of the trustees or trustee for the time being, and altered and transferred with and by the consent and direction thereinbefore expressed and declared with regard to the said sum of 2,000*l.* and the stock, funds, and securities in or upon which the same might be invested. And it was declared that the said investments should be held upon trust for the said E. Melvil for life, for her separate use, without power of anticipation, with remainder for W. B. Otter for his life, or until bankruptcy, &c., with remainder upon the trusts therein mentioned. In the same indenture was also contained a covenant by Robert Melvil, (the father of E. Melvil,) that he would in his lifetime, or his heirs, executors, or administrators, should, within six months after his decease, pay or transfer to the trustees 100,000 florins, Dutch currency; and that the trustees might convert the same into English money, and invest the same in the

same manner as the 2,000*l.*; and that the same, and the dividends, interest, and produce thereof should be held on the like trusts, and subject to the same provisoes, conditions, and declarations as were thereinbefore expressed and declared "respecting the future personal estate of the said Elizabeth Melvil." Miss E. Melvil was at the time of her marriage entitled to a very considerable sum of money, which was in the hands of her father, and had been left as a legacy to her many years previously by a Mr. Ogg, and to numerous small pecuniary gifts from time to time made to her during her infancy, constituting what in Dutch families and language is called a child's "*spaar pot*," (that is a saving pot), and which had been invested or kept by her father for her benefit. The existence of this property was unknown to the plaintiff at the time of the marriage, and Mr. R. Melvil dying in 1840, his executors paid to the trustees of the settlement 13,248*l.* 17*s.* 9*d.*, which was afterwards invested. A statement was subsequently furnished to the plaintiff of the items of the above sum, wherein the following appeared,—"Mrs. Otter's private fortune, 1,211*l.* 3*s.* 2*d*;" and he afterwards, upon inquiry, discovered that the 1,211*l.* 3*s.* 2*d.* was the property before-mentioned to which Mrs. Otter was absolutely entitled before her marriage. The bill was then filed by the plaintiff against the trustees of the settlement, stating that there had been issue of the marriage, &c., and praying a declaration that the personal property to which the wife was entitled in possession at the time of the marriage was not subject to the covenant of the plaintiff and his wife, or bound by the trusts of the settlement. The defendants demurred for want of equity.

Mr. *Wigram* and Mr. *J. V. Prior*, appeared for the demurrer, citing *Blythe* v. *Granville*, 13 Sim. 190; *Hoare* v. *Hornby*, 2 Y. & Coll. C. C. 121; *Grafftey* v. *Humpage*, 1 Beav. 46, and *James* v. *Durant*, 2 Beav. 177.

Mr. *W. M. James*, who appeared to support the bill, stated, that the debt was one immediately demandable from the father.

His *Honour*. Upon that statement, I do not think that the trustees of the settlement became entitled to the money constituting this debt due to the lady from her father, for the wife's benefit. I consider that the words in this settlement are distinguishable from the words in the cases cited, and I am of opinion that the deed meant that only the property demandable thereafter was to be bound by it. In that view the demurrer must be overruled, and the costs be costs in the cause.

Court of Queen's Bench.

(Before the Four Judges.)

***The Queen* v. *Joseph Booth*.** Michaelmas Term, Nov. 13th, 1848.

APPOINTMENT OF DEPUTY CONSTABLE UNDER 5 & 6 VICT. C. 109.

A deputy parish constable, nominated by his principal, and approved of by the justices at Special Sessions, may be sworn in as deputy, although his name is not contained in a list made out by the inhabitants in vestry assembled, and returned to the justices as the list of persons qualified and liable to serve such office, pursuant to the 5 & 6 Vict. c. 109.

A RULE *nisi* had been obtained for an information in the nature of a *quo warranto*, calling upon Joseph Booth to show by what authority he claimed to fill the office of constable of the parish of Townley. The statute 5 & 6 Vict. c. 109, for the appointment and payment of constables by section 2, enacts, that justices at special sessions shall, at certain periods in each year, issue a precept to the overseers of each parish in their division, to make a list of persons qualified and liable to serve as constables.

Section 3 directs the overseers to call a vestry meeting to make out such list as aforesaid. Provided that it shall be lawful for the vestry to annex to the said return the names of any number of men willing to serve the office of constable, and whom the vestry will recommend, although not having the proper qualification.

Section 5 enacts, that every able-bodied man resident within such parish, between the ages of 25 and 55 years, rated to the poor or county rates, or any tenement of the yearly value of 4*l.*, shall be qualified to serve as constable.

Section 8 directs the list to be fixed on the church doors.

Sections 10 and 11 direct in what manner the justices shall choose a constable, from the list so returned by the overseers.

And in section 12 there is a proviso, that if any qualified person chosen as aforesaid shall be unwilling to serve the office of constable in person, and shall find a substitute, to be approved by the justices, and willing to serve for him, the person so chosen and willing to serve, shall attend with his proposed substitute at the time and place appointed for swearing in constables; and the justices, if they shall approve of such proposed substitute, shall cause the oath to be administered to him instead of the person so chosen and unwilling to serve.

A person named Clark, whose name appeared in the list returned by the overseers, was appointed constable, but being unwilling to serve, Booth was appointed, and sworn in as his substitute, and the objection to his appointment was, that his name was not contained in the list so returned by the overseers.

Mr. *Knowles* now showed cause, and contended, on the construction of the act, it was not necessary that the substitute should have the qualification required for the principal, and that his name need not be in the list, but that it was only requisite that he should be approved of by the justices.

Mr. *Huddleston*, in support of the rule, contended, that the statute 5 & 6 Vict. c. 109, was only in confirmation of the old law on the subject, which gave to the parishioners of every parish a right to select a person on whom they

could place reliance, and they would lose that privilege if a person could be sworn in whose name was not on the list which they had approved of and sanctioned.

Lord *Denman*, C. J. It seems to me that the act is perfectly clear. There is to be a list which must be composed of qualified persons. There is to be another list of persons not qualified, but who are willing to serve. Here the qualified person makes an agreement with one of the persons on the list of those who were willing to serve. Of course, the substitute must have some consideration for serving. If the consideration was corrupt, that would of itself set aside the whole proceeding. It appears to me that the act of parliament has been fully complied with.

Mr. Justice *Coleridge*. I am entirely of the same opinion. We cannot decide this case on the construction of the act of parliament merely with a view to the convenience or inconvenience of one side or the other. If we held the doctrine which Mr. Huddleston presses on us, we should establish a very absurd consequence. There is nothing to show that the substitute must be a qualified person in the sense of qualification as employed in the act and as required for the persons whose names are inserted in the list made under the precept issued by the magistrates to the vestry. The third section shows that persons willing to serve, and who may be recommended by the vestry, may be appointed, though not strictly qualified persons. So that, under the act itself, it is clear that some unqualified persons may, under some circumstances, serve as principals. Now the question in this case is, whether unqualified persons may serve as substitutes. It would be strange if they might serve as principals, and yet might not serve as substitutes; yet that consequence would inevitably flow from the argument now pressed upon us. The magistrates direct a precept to the vestry to return a certain competent number of qualified persons. In that list the vestrymen can only put qualified persons; they cannot do more; they do in that all that the magistrates require. I have already stated that the act allows unqualified persons to serve as principals; the list is of qualified persons only. Now, suppose a man in that list unwilling, or unable from illness, for instance, to serve, do you mean to say that he shall not serve by deputy because he cannot find one in that list who will act as his deputy, and that he shall not apply to any of the persons who, though not qualified by the act, are willing and able to serve, and that he shall not from their number, all of whom might serve as principals, select one to serve as a deputy? Such a consequence seems to me to be absurd and one which the act never intended to create.

Mr. Justice *Wightman*. The only objection here is, that the name of the substitute does not appear in the list of those who are returned to the magistrates as qualified under the act. I do not find anything in the act to show that the name of the substitute shall also be on the list of qualified persons, and indeed it is not necessary that he should be on that list, for he is to be presented to the magistrates, who are to exercise their discretion in his appointment. That is in itself sufficient to prevent the appointment of an improper person.

Mr. Justice *Erle*. It appears to me that this rule ought to be discharged. The question is, whether the statute has required that there should be a qualified person to serve as a substitute. The statute does not in terms require that, but it is said that this ought to be implied because the office of constable was formerly filled on appointment by the vestry. But it has also been the law that the person appointed might fill the office by deputy. I do not find that there was any thing controlling the exercise of the discretion of the principal in the appointment of the deputy, but it is assumed in the case of *The King* v. *Clark*, that the person may serve by deputy. I do not think that we are entitled to alter the words of an act of parliament.

Rule discharged.

Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

Clarke v. *The East India Company*. Wednesday, Nov. 15, 1848.

COMMISSION TO EXAMINE WITNESSES.

A commission to the Colonies to take the examinations of witnesses on interrogatories cannot be granted by a judge at chambers, but must be the subject of motion to the Court.

On a former day *Forsyth* obtained a rule on the part of the defendants, calling upon the plaintiff to show cause why the order of a judge at chambers, made in this cause, for a commission to the Mauritius to examine certain witnesses on interrogatories, should not be set aside; and why a new order should not be made, and a fresh commission issue thereupon. It appeared that the defendants being desirous of having the testimony of certain witnesses resident in the Mauritius, applied to a judge at chambers for an order for a commission (or mandamus) to issue to that island for the purpose, which order was accordingly granted. It subsequently occurred to the plaintiffs that a judge at chambers had no authority to make such an order, which can be made alone by the Court, and thereupon they applied to the plaintiff's attorney to know if he would waive any objection to the writ, if issued; but receiving no reply, the present application was deemed necessary. The act regulating the issuing a commission is, the 13 Geo. 3, c. 63, which is extended by the 1 W. 4, c. 22, s. 1. By the 44th section of the first act, it is enacted, "that it shall and may be lawful for the said Courts," (the Superior Courts) "respectively, upon motion there to be made, to provide and award such writ or writs in the nature of a mandamus or commission as aforesaid," &c. Upon moving for the rule, the case of *Smeeton*

v. *Collier*, 1 Exch. Rep. containing at pp. 459 and 460, the dicta of *Parke*, B., and *Alderson*, B., were cited.

Manisty showed cause, and contended, that a judge at chambers had the same power upon the subject as the full Court.

Forsyth, contrà.

Patteson, J. In *Smeeton* v. *Collier*, the Court held, that if there are words of limitation, a judge at chambers has no power. Here the words are, "upon motion *there* to be made," which shows that the motion must be made to the Court, and not to a judge at chambers. The 1 W. 4, c. 22, s. 1, merely extends the provisions of the former act.

Rule absolute.

Court of Common Pleas.

Wilson (*Public Officer*) v. *St. John Equitable Loan Society*. Michaelmas Term, 1848.

INCORPORATED SOCIETY UNDER 7 & 8 VICT. C. 110.—SERVICE OF WRIT OF SUMMONS. —ENTERING APPEARANCE.

Where a copy of a writ of summons had been served upon the registered president (who was also a director) and four other directors of a loan society completely registered under the 7 & 8 Vict. c. 110, and it also appeared that, owing to the secretary's having left his place of residence and business, and, as it was believed, gone abroad, no service could be effected upon him, the Court, upon the application of the plaintiff, granted a rule nisi *to enter an appearance for the society, to be served upon the same parties, which was afterwards made absolute, no cause being shown.*

Warren moved in this case for a rule to show cause why the plaintiff should not be at liberty to enter an appearance for the loan society, to the writ of summons in the action. The affidavits in support of the motion stated, that the society had been completely registered under the provisions of the 7 & 8 Vict. c. 110, and in the return made under that act to the registration office, a person named J. Molloy was returned as one of the directors and president of the society, and one W. T. Pritchard, as secretary—that a copy of the writ of summons had been served on Molloy, and four other directors, as also on the former and present attorneys of the society—and that service could not be effected on Pritchard, as upon inquiry it was ascertained that he had left his place of business and residence, and it was believed had gone abroad. These facts, it was submitted, were sufficient to entitle the plaintiff to have the present application granted. The effect of complete registration under the 7 & 8 Vict. c. 110, was to incorporate the society, and by the 13th sect. of the Uniformity of Process Act, it was provided, that every writ of summons against a corporation aggregate, might be served on the mayor or other head officer or secretary, &c. of such corporation. Here the latter provision had been complied with, service having been effected on Molloy, who must be considered as the head officer of the society. He referred to the case of *Walton* v. *The Universal Salvage Company*, 4 Dowl. & Lowndes, 558, (33 L. O. 308.)

Per curiam. You may take a rule to show cause to be served upon Molloy and the other directors. Rule *nisi*.[a]

Court of Exchequer.

Butler v. *Coney*. June 13, 1848.

COUNTY COURT.—SUGGESTION.—COSTS.

This Court will grant a rule to enter a suggestion in pursuance of the 9 & 10 *Vict. c.* 95, *(the County Courts' Act,) to deprive the plaintiff of costs in cases where it is doubtful whether he is entitled to it in point of law.*

Semble, *that a bill of exchange is within the provision of that act.*

Quære, *whether it is necessary that the affidavit upon which the application is made should negative all the exceptions in section* 128 *of that act.*

Manisty (May 30) obtained a rule calling upon the plaintiff to show cause why he (the plaintiff) should not bring the postea into Court, and file the plea roll, in order that the defendant might enter a suggestion in pursuance of 9 & 10 Vict. c. 95, s. 129, to deprive the plaintiff of costs, and why the judgment should not be set aside with costs, and in the meantime all proceedings be stayed.

Needham now showed cause. The rule had been obtained under ss. 128 & 129 of stat. 9 & 10 Vict. c. 95, upon an affidavit which was altogether insufficient. In order to bring the plaintiff within the provision of section 129, the defendant must show that the plaint was entered for a cause of action other than those mentioned in section 128; he must show either that the plaintiff did not reside more than 20 miles from the defendant, or that the cause of action did not arise, wholly or in some material point, within the jurisdiction of the Court. The affidavit stated that the action was brought within the present year, and was founded upon a contract; that the sum recovered was 19*l.* 15*s.*; and that it was for a cause of action for which a plaint might have been entered in the County Court. The objections to the affidavit are several:—first, it was quite consistent with this affidavit that there might have been several causes of action, one of which was within the jurisdiction of the County Court and all the others were not: indeed the fact was, that much doubt existed whether a part of the causes of this action—a bill of exchange—was within the jurisdiction of the County Courts. Then under section 128, the defendant must show that the plaintiff and the de

[a] The rule was afterwards made absolute upon an affidavit of service of the rule *nisi*, as directed by the Court, no cause being shown.

fendant resided within 20 miles of each other, the time of the residence being that of the commencement of the action, the words being "where the plaintiff dwells." Now supposing, that the plaintiff and the defendant resided more than 20 miles apart, the plaintiff would have a perfect right to bring his action in the Superior Courts; but if it has reference to any subsequent period, the defendant might alter his place of abode, and thus deprive the plaintiff of his costs. [*Pollock*, C. B. It must be taken to mean at the time of action brought. That the defendant does not negative.] In the next place, the affidavit did not negative the fact of the plaintiff being an attorney of the Superior Courts. *Jones* v. *Brown*, 17 L. J. Exc. 163, and 36 L. O. 100. [*Pollock*, C. B. It is enough that the party applying for the suggestion states that which is *primâ facie* sufficient.] It had been decided that the affidavit must negative the fact of the party being an officer of the County Court. [*Pollock*, C. B. Is the party here an attorney? if not, why should we enter into that question.?] To show by parity of reasoning that it was necessary to negative the fact. [*Pollock*, C. B. Officers of the Court are expressly mentioned in section 128.] Again, the affidavit only stated that the action was upon contract, and it was quite consistent that it might have been a contract of marriage, or in respect of toll, fair, or market, and so within the exceptions to the County Court jurisdiction, as in section 58. This should have been negatived. The affidavit ought to have disclosed all the necessary circumstances to show that this was clearly a case in which the County Court had jurisdiction. He would further urge, in reference to the first objection, that this action was brought for other causes, as also upon a bill of exchange; and that an action upon a bill of exchange, as upon a bond, cannot be said to arise anywhere, it is *nullius loci*, and is therefore within section 128. [*Pollock*, C. B. That is a question we cannot decide upon a motion for this rule. *Rolfe*, B. Will not the proper way to raise the question be upon a plea to the suggestion? You will not be shut out from contending that a bill of exchange is not within the jurisdiction.] In *Nind* v. *Rhodes*, 36 L. O., May 27, 1848, p. 69, Coleridge, J., seemed to hold that bills of exchange were within the act, but the question was now pending before the Common Pleas, and it appeared difficult to see how the cause of action upon a bill of exchange could be said to arise within the jurisdiction. *Mondel* v. *Steele*, 8 M. & W. 640. [*Alderson*, B. The statute is not where it arises wholly, but where it arises in some material part.] It is not said that it does arise in some material part. The legislature may have had a good reason for wishing to exclude bills of exchange, which, depending upon mercantile law and usage, involve great interests. [*Alderson*, B. Bills of exchange are clearly within section 58; the only question is whether the Superior Courts have not a concurrent jurisdiction.]

Manisty, in support of the rule. The only question really is, whether there is a concurrent jurisdiction. Now, this being an action for goods sold and delivered, and also upon a bill of exchange, it could not be said that the action in respect of the goods sold was not material; and this cause of action arising within the jurisdiction of the County Court takes it out of the exception in section 128, giving concurrent jurisdiction. Besides, it is distinctly stated that it was a cause of action for which a plaint might have been entered in the County Court. He was then stopped by the Court.

Pollock, C. B. I think the defendant is entitled to a suggestion upon the construction of the act. It is true that we are to decide a question of law whenever it arises before us, but where the question is doubtful, and our decision one way is decisive, and in the other puts the question in a train for further inquiry, we ought to decide it in such a way that such further inquiry may take place upon the question being again brought before the Court in its proper form. If the suggestion be not true, it may be traversed and decided upon a full hearing. If there is any doubt, we ought not to deprive the party of the power of moving.

Alderson, B. I am of the same opinion.

Rolfe, B. I think it is a most inconvenient course to decide this question upon motion: it is better at once to determine that the proper way is to permit the entry of a suggestion in order that the matter may be discussed. If the party has a legal right to enter a suggestion, the Court is bound to assist him. The question whether the defendant is right in his view of the law will arise upon the pleadings.

Rule absolute.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Law of Wills.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, p. 11.
Law of Costs, p. 35.
Law of Evidence, p. 56.]

ABSOLUTE GIFT.

Limited bequest. — Distinction between an absolute bequest with a subsequent gift in derogation, and a limited bequest followed by a subsequent restricted gift over. In the former case, the absolute gift remains upon failure of the subsequent gift, but in the latter the limited bequest is not enlarged by such an event. *Scawin* v. *Watson*, 10 Beav. 200.

ATTESTATION.

Presumption.—Presumption in favour of a will, apparently duly executed, where one attesting witness was dead, the second denied her signature, but was not believed, and the third was of defective memory. *Hitch* v. *Wells*, 10 Beav. 84.

CONTRIBUTION BY LEGATEES.

A contribution was directed amongst specific legatees for payment of the debts and costs of suit. One of such legatees became insolvent, and by his non-payment the fund raised was deficient. The Court directed an additional contribution amongst the solvent legatees. *Conolly* v. *Farrell*; *Conolly* v. *Butcher*, 10 Beav. 142.

CONVERSION.

1. *Held*, upon the construction of a will, that the real estate had not been converted out and out. *Hopkinson* v. *Ellis*, 10 Beav. 169.

2. Testator gave all his estate and effects of what nature, kind, or quality soever, after payment of his debts, funeral and testamentary expenses, to trustees, their heirs, executors, &c., in trust, in case there should not be sufficient to pay the annuity thereinafter given to his wife, to sell all his real and personal estate and invest the proceeds in the funds, and out of the dividends, or the rents of his real estate until the same should be sold, to pay his wife an annuity of 300*l.*, and after paying an annuity to another person, to pay the residue of the rents and dividends to his wife for her life; and he gave all the rest of his estate and effects, after payment of his debts, legacies, and funeral and testamentary expenses, and the beforementioned annuities, to his four sisters, to be equally divided between them, share and share alike; but if any of them should die before their shares should become due and payable, leaving a child or children, then he gave the share of such of them so dying, unto such child or children. The testator left no residuary personal estate, and the rents of his real estate were not nearly sufficient to pay his wife's annuity. But, nevertheless, the real estate remained unsold long after her death: *Held*, that, under the circumstances, it was to be considered as converted into personalty by the will. *Ward* v. *Arch*, 15 Sim. 389.

CY PRES.

See *Executory Limitation.*

DEBTS FROM MIXED FUND.

A testator directed his debts to be paid out of his personal estate, and, in a subsequent clause, out of a mixed fund composed of realty and personalty: *Held*, on the context, that the latter direction prevailed. *Hopkinson* v. *Ellis*, 10 Beav. 169.

DEVISE.

Fee Simple.—A testator devised and bequeathed his real and personal estate to his wife and three other persons, and their heirs, executors, &c., for ever, upon trust for his wife to receive the rents for life; and after her decease, upon trust "to pay and divide" the rents among his children as they attained 21, and after their decease, to pay the principal of their respective shares unto their legal representatives, their executors, administrators, and assigns. He gave power to the trustees to sell, with power of maintenance out of the rents, and advancement out of the principal of their shares; and in case any of his freehold estates should not be sold by his said trustees, then, from and after the decease of his said children, he devised the same unto their respective heirs and assigns, as tenants in common. And he directed that the receipts and conveyances of his said trustees to any purchasers of any part of his estate and effects, should be good discharges and assurances.

Held, that the trustees took the legal fee, and that the children were entitled to equitable estates for life, with equitable remainders to their heirs, which united, gave them equitable estates in fee simple. *Reynell* v. *Reynell*, 10 Beav. 21.

DISCRETIONARY POWER.

Validity of bequest.—A testator directed his trustees to invest his personal estate in lands in England *or* Scotland, the limitations of which were to be different: *Held*, that this was a discretion of such a nature, that this Court could not execute it.

Validity of a bequest in England of personal estate to be laid out in lands in Scotland according to limitations creating a perpetuity. *Fordyce* v. *Bridges*, 10 Beav. 90.

EXECUTORY LIMITATION.

Successive life estates to unborn persons.—Remoteness.—Cy près.—Devise and bequest of freehold and leasehold estates, to trustees upon trust, after paying certain annuities, to settle the same, so that, as nearly as the rules of law and equity would permit, the testator's six younger children should receive the rents and profits in equal shares during their lives, with benefit of survivorship if any of them should die without leaving issue, and if any should die leaving issue, that the child or children of him or her so dying, during the lives of his said other children and of the survivor, should take the share of him or her so dying of the said rents and profits; and that, upon the death of all his said other children, as to the leasehold estates, the same to go and belong to the issue of his said other children for their respective lives, in equal shares, with benefit of survivorship; and as to the freehold estates, the issue of his said children to take the rents, profits and proceeds thereof for their respective lives in equal shares, with benefit of survivorship in case of the death of any of such issue without leaving issue, and if any of such issue of his said children should die leaving issue, the child and children of him or her so dying, during the lives of such issue of his said children and of the survivor of them, should take the share of him or her so dying; and after the

death of all the issue of his said children, then, as to the leasehold estates, the same to go and belong to the child or children of such issue absolutely as tenants in common; and as to the said freehold estates, in case the issue of his said children, or any of them, should have issue living at the decease of the last survivor of the said issue, then that the same should be to the use of the child and children of the bodies of the issue of his said children, and of the heirs of the body and respective bodies of such child or children, and, if more than one, equally to be divided amongst them as tenants in common; and if there should be a failure of issue of the body or bodies of any such child or children, then, as to the original and accrued shares of such child or children whose children should so fail, to the use of the remaining and other and others of the said children, and the heirs of the body or bodies of such remaining and other children, and, if more than one, equally as tenants in common; and in default of such issue of the issue of the children, to the use of the right heirs of the testator. The six younger children of the testator survived him. Some of them had children at the time of his death, and some had children born after his death.

Held, that the six younger children of the testator took life interests in both the freehold and leasehold estates, with remainder, as to the freeholds, to the children of such younger children as tenants in common in tail, with cross remainders between and among them, and the ultimate remainder to the testator's right heirs; and *semble*, that the same children of such younger children (after the decease of the last survivor of their respective parents, the tenants for life) take absolute interests in the freeholds.

That in considering the validity of the limitations, the state of the family at the death of the testator (and not at the date of the will) is to be regarded; and, therefore, if a gift be to such of the children of a particular parent as shall attain a greater age than 21 years, and the parent die in the lifetime of the testator, and the class be ascertained at the testator's death, the gift is valid. That the limitation to the unborn children of the testator's children for their lives, was not void for remoteness only, because it was a gift to persons who might be unborn at the death of the testator.

That where, upon the decease of the testator's "children," the estate was given to the "issue" of such children, and where it was given over in case the testator's "children" should die "without leaving issue," and in like uses of the word issue;—the word "issue" must be read "child or children," although, in other parts of the will, it might be necessary to read the word "issue" in a different sense. *Williams* v. *Teale*, 6 Hare, 239.

Cases cited in the judgment: Sibley v. Perry, 7 Ves. 522; Vanderplank v. King, 3 Hare, 1; Humberston v. Humberston, 1 P. Wms. 338.

FEE SIMPLE.

See *Devise*.

FOREIGN PROBATE.

Payment of a sum of 34*l.* to the legal personal representatives, under a Genevese probate, refused. *Lasseur* v. *Tyrconnel*, 10 Beav. 28.

GIFT, ABSOLUTE.

See *Absolute Gift*.

LEGACY.

Qualifying words to last antecedent. — On construing an appointment of stock in these words, "unto and among my said brother and my sisters and my nephews and nieces living at the decease of my wife, in equal shares and proportions," it was held, that the qualification of living at the death of the wife attached only to the nephews and nieces,—the last antecedent.

The direction as to the shares and proportions in which the legatees are to take the property does not affect the construction of the words which describe the persons who are to take. The legatees took per *capita*. *Baker* v. *Baker*, 6 Hare, 269.

LEGATEES' CONTRIBUTION.

See *Contribution by Legatees*.

LIFE ESTATE OR IN TAIL.

Devise and bequest of residuary, real, and personal estate to the testator's son and the heirs of his body for ever, and, in case the son should die without children, the whole to be divided amongst the testator's surviving grandchildren, share and share alike. The son takes an estate tail in the freehold part of the property. *Abram* v. *Ward*, 6 Hare, 165.

See *Executory Limitation*.

LIFE INTEREST.

Bequest to a daughter of 1,000*l.* stock, and 70*l.* a year for life, which two sums were to be under the trust of the executors, and not to permit her to assign "her said annuities," and pay the interest from the 1,000*l.* to her for life, and at her decease to divide it between her children: *Held*, that the daughter took for life only, and not an absolute interest, subject to be defeated by the interests given to her children. *Scawin* v. *Watson*, 10 Beav. 200.

LIMITATION.

See *Absolute Gift*; *Executory Limitation*; *Tenant in Common*.

MIXED FUND.

Costs of administration suit.—Costs of administration suit payable *pro ratâ* out of a mixed fund composed of realty and personalty. *Hopkinson* v. *Ellis*, 10 Beav. 169.

See *Debts*.

"OR" CONSTRUED "AND."

Testator gave all his property to his mother for life, and directed that, at her decease, it should be divided amongst his three sisters, *or their children*, in such proportions as she should appoint. The mother and one of the sisters died in the testator's lifetime. The deceased sister left no issue; but one of those

that survived had children: *Held*, that "or" must be read "and"; and that, under the circumstances of the case, the property must be considered as given to the three sisters and their children in equal shares. *Penny* v. *Turner*, 15 Sim. 368.

PER CAPITA.

Survivorship.—Residuary bequest in trust for *A.* for life, and after her decease, to distribute "between the testator's brothers and sisters, and such of their children as should be then living, the parents and children to be classed together, and to share in equal proportions:" *Held*, that those brothers and sisters only who survived *A.* were entitled, and that they took *per capita*. *Turner* v. *Hudson*, 10 Beav. 222.

POWER OF SALE.

A reversion of a moiety of a farm was settled on a marriage, and the trustees were empowered to sell it *when in possession*; and the intended husband and wife covenanted that, if they should thereafter acquire any other share or interest in the farm, they would, immediately thereupon, convey the same so that it might become vested in the trustees upon the trusts and subject to the powers declared of the settled moiety. After that moiety had fallen into possession, a moiety of the other moiety descended to the wife, not in possession, but subject to a life interest.

Held, nevertheless, that it, as well as the settled moiety, were saleable under the power. *Giles* v. *Homes*, 15 Sim. 359.

PRESUMPTION.

See *Attestation*.

REMOTENESS.

See *Executory Limitation*.

SALE.

See *Power of Sale*.

SUCCESSION.

A testatrix bequeathed the "interest" of a sum of money to her eldest child for life, "and afterwards to devolve in succession on her (the testatrix's) remaining children:" *Held*, on the death of the eldest, that the others were entitled for life in succession, according to their priority of age. *Young* v. *Sheppard*, 10 Beav. 207.

SURVIVORSHIP.

See *Tenant in Common*; *Per capita*; *Trustee*.

TENANT IN COMMON.

Survivorship.—Life interest.—Gift in trust to be equally divided between *A.*, *B.*, and *C.*, separate from "their" husbands, and for "their" sole use, and at "their" decease, to be divided amongst "their" daughters: *Held*, that *A.*, *B.*, and *C.* each took one-third for life with remainder as to her one-third, to her daughters. *Willes* v. *Douglas*, 10 Beav. 47.

See *Per capita*.

TENANT FOR LIFE.

Remainder-man.—Enjoyment in specie.—A testatrix gave her property, with certain exceptions, to her granddaughters, and afterwards stated "that her property was in the Bank and India House:" *Held*, (assuming her to take for life,) that she was entitled to enjoy the Bank India Stock *in specie*, and that it was not liable to be converted into consols. *Hubbard* v. *Young*, 10 Beav. 203.

TRUSTEE.

Cestui que trust.—Bequest of trust property by the last survivor.—The survivor of two executors and trustees bequeathed the trust property to *A.*, upon the trusts declared by the original testator, expressing by the same instrument his wish that *A.* would execute the trusts with fidelity. No direction was given by the will of the original testator as to the appointment of new trustees. On a bill by the *cestui que trust* for that purpose, *held*, that *A.*, though legally in the possession of the trust property, was not a trustee properly constituted, and that the *cestui que trust* were entitled to have new trustees appointed by the Court. *Mortimer* v. *Ireland*, 6 Hare, 196.

VESTED INTEREST.

Substitution.—Bequest of sums of consols and 4 per cent. Consolidated Annuities, to the testator's wife for her life, and at her decease one-half of the produce of such sums to be received and divided amongst the testator's surviving brothers and sisters, and their issue, share and share alike: *Held*, that the brothers and sisters living at the death of the testator took vested interest in the fund, liable to be divested by their death, leaving issue before the period of distribution; and that such issue took, by substitution, for their parents. *Shailer* v. *Groves*, 6 Hare, 162.

Case cited in the judgment: Wordsworth v. Wood, 4 Myl. & Cr. 641.

BUSINESS OF THE COURTS.

MON LAW SITTINGS.

Queen's Bench.

THIS Court will, on Monday the 27th, and Tuesday the 28th days of November inst., and on Monday the 4th, Tuesday the 5th, Wednesday the 6th, Thursday the 7th, Friday the 8th, and Saturday the 9th days of December next, hold Sittings, and will proceed in disposing of the business in the Special Paper, New Trial Paper, and Crown Paper, and will also hold a Sitting on Monday the 18th day of December next, and give judgment in cases previously argued.

Exchequer of Pleas.

SUITORS IN PERSON.

Direction to the Masters.

No Suitor who appears in person is to be at liberty to set down any Motion in the List of Motions postponed beyond the 1st four days of Term, without the express leave of the Court.

Exchequer of Pleas.

After Michaelmas Term, 1848.

IN MIDDLESEX.

Monday	Nov 27	Common Juries.
Tuesday	28	Excise and Common Juries.
Wednesday	29	Common Juries.
Thursday	30	
Friday	Dec. 1	
Saturday	2	
Monday	4	Special Juries and Common Juries, (if necessary.)
Tuesday	5	
Wednesday	6	
Thursday	7	
Friday	8	
Saturday	9	

IN LONDON.

Monday	Dec. 11	Adjournment Day, Common Juries.
Tuesday	12	Common Juries.
Wednesday	13	
Thursday	14	
Friday	15	
Saturday	16	
Monday	18	Special Juries and Common Juries, (if necessary.)
Tuesday	19	
Wednesday	20	
Thursday	21	
Friday	22	
Saturday	23	

The Court will Sit at 10 o'clock.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER TRINITY TERM, 1848.

Queen's Bench.

London.

D. Richardson	Mackay	(Inj.)	Brooke	Tres. Baxendale and Co.
Capes and S.	Blackmore	(Inj.)	Burton & ors., exors, &c.	Dt. Alban and B.
Keene	Dean	(Inj.) S. J.	Grace	Dt. Smith
Vincent and S.	Franklin & another (stayed)	S. J.	Davis and others	Covt. Wm. Bevan
Lewis and S.	Brand	(stayed)	Harper	Dt. Wilde and Co.
W. H. Green	Bond	(Inj.) S. J.	Stanley	Prom. Few and Co.
Phillips	Hartley & another	(stayed)	Manton	Van Sandau & Co.
Pearce and Co.	Robertson	(stayed) S. J.	Dargan	Covt. Norris and Son
C. B. Wilson	Gibbs	(stayed)	Aberdeen	Covt. Gilbert, Hook, & Co
Jordeson	Cundell	(stayed)	Harrison and others	Pro. Chester and Co.
Hughes, K. and M.	Berkley		De Vear, sued, &c.	Pro. Condell
Hook	Conyngham, Esq., and others	S. J.	Macgregor (Inj.)	Prom. Fearon and C.
Geil and H.	Dickinson	S. J.	Bradley	Pro. Sudlow and Co.
Warter	Sherlock and another	S. J.	Browne	Pro. Campbell
G. Ashley	Pridmore	S. J.	Ward	Pro. Elmslie and P.
Starling	Newman	(Inj.)	Parry	Hughes, K. and M.
Williamson and H.	Udall and another	S. J	Chodwick	Ca. Cox and S.
Few and Co.	Brett	S. J.	Thomson	Pro. Thomas and M.
Amory and Co.	Taylor, (P. O. &c.)	S. J.	Bradley	Pro. Sudlow and Co.
R. and W. G. Roy	Walker	S. J.	Sutterthwaite	Pro. Vizard and Co.
Warry and R.	Jones		Lyne	Pro. Clarke and Co.
C. Ford	Edwards & ors., assignees, &c.	S. J.	Cooper	Ca. G. and C. Smith
Symes and Co.	Conolly	S. J.	Morton	Ca. L. W. Williams
H. Ashley	The Queen		Savage	Indt. J. Billing
Young, V. and G.	Dewing and another	S. J.	Cox	Pro. Amory and Co.
Butler	The Queen		Worley	Indt. De Medina
G. Fry	Bunge	S. J.	Stulpner and another	Pro. Burnell
Dale	The Queen		Brighton	Indt. Wakeling
Harbin and W.	Johnson	S. J.	Bradley	Dt. Sudlows
Drew and S.	Allen and ors., executrix and executors, &c.		Goodchild	Pro. Lonsdale
Fitch	Joel		Clifton	Dt. Stevens and G.
R. and W. G. Roy.	Hardy, (P.O.)		Sanderson	Sci. Fa. Burn

Theobald	Collard and others	Dobree	Ca. Humphreys
Maxon and W.	Armstrong	Parnell	Pro. Collins and R.
Horwood	Edgar	Beck	Pro. Reddell
Maples and Co.	Barclay and others	S. J. Thompson	Pro. Oliverson and Co.
Vardy	Wilson	S. J. Holden	Pro. Donne and T.
Simpson and C.	De Barros	S. J. Weatherhead	Tres. Tilleard and Co.
E. Flower	Biron	S. J. Ashlin	Pro. Pontifex and M.
Turner and Son	Dexter	German	Pro. Jutsum and Co.
Watson, B., and Son	Doe dem Bill	Linnear and others	Ejt. Grainger
Lawrence and R.	Hodgkinson	Littledike	Dt. Martin and W.
Hodgson and B.	Hadley	S. J. Maitland	Pro. Anderson
Lacy and B.	Baily and another	S. J. Bracebridge	Pro. W. H. Smith
Callow	Brandon	Edgar	Pro. Horwood
Bickley	Chapman	S. J. Tudor	Pro. O. Gray
Burrell and Son	Russell	Plumpton	Tres. Turner and Son
Same	Same	Same	Covt. Same
Fitch	Fitch	Clifton	Dt. Stevens and G.
Same	Toombs	Same	Pro. Same
Bicknell and B.	Bicknell	Welton	F. I., Kingdom and Co.
R. and W. G. Roy	Harvey, (P. O.)	Pawson	Sci. Fa. Hawkins and Co.
Birkett	Nelson	Cross	Pro. Teague
Hodgson and B.	Naesmith	Arden	Pro. J. W. Johnson
Ashley	Nicholson	Myers	Dt. Jaques and Co.
J. Reed	Read and another	S. J. Attwood	Prom. Gregory, F. and Co.
Cox and Co.	Jegon	Long	Dt. Hartley
G. H. Mirfin	Baker	Way	Pro. person
G. Cates	Walford	Payne	F. I., Clapham
Maples and Co.	Lloyd and another	Meredith	Pro. White and Co.
Thornby and S.	Bates, P. O., &c.	S. J. Bevan	Pro. Jay
Simpson and Co.	Mangles	S. J. Moore	Pro. R. Ellis
Maples and Co.	Huntley and others	S. J. Pints and another	Pro. Oliverson and Co.
Same	Hunter	S. J. Dodgson, secr., &c.	Cotton and L.
Riddill and Co.	Barry	S. J. Simpson	Pro. Simpson and Co.
R. and W. G. Roy	Harvey, P. O.	S. J. Brooke	Sci. fa. Van Sandau & Co.
Maples and Co.	Bell, P. O.	Broady	Pro. Guillaume
In person	Bloxam and another	S. J. Webber	Dt. In person
Tucker	Judd	Weeks	Dt. Rosson
Blower and Co.	Toley	Bonell	Pro. Sherriff
Scott and T.	King	S. J. Jacquet	Pro. Rae and B.
Bower and Son.	Cobbold and another	S. J. Hernaman and others	F. I. Pro. Brace and Co.
H. H. Hoskins	Job	Hudson, gent., &c.	Ca. In person.
Same	Same	Job, sued, &c.	Dt. W. Justice
Palmer, F. and P.	Johnson and another	Turner	Dt. Pain and H.
Same	Same	Same	Dt. Same
Same	Same	Curtis	Dt. Same
Champion and B.	Sayer	S. J. Cockerell and others	Pro. Oliverson and Co.
Brundrett and Co.	Woodlands and others	Saph	Pro. Smith and A.
Rosser and T.	Rhodes	Brown	Dt. Haines
J. Sprigg	Flowerday	Thomas	Dt. Hodgson
Same	Auger, extrix., &c.	Same	Dt. Same
Starling	Foster	Roberts and others	Dt. Thomas and M.
Same	Same	Ingram	Pro. Same
T. J. Foord	Davis	Livermore and another	Pro. Humfray
Hodgson and B.	Isbister	S. J. Arden	Pro. J. W. Johnson
Sandys	Vivian and others	S. J. Harrison and another	Pro. Coode and Co.
Sewell and F.	Dejoncourt	Rogers	Dt. Kearns
In person	Darke	Guyon, clk.	Pro. F. Duncombe
Symes and Co.	Blake and others	S. J. Melladeur and others	Pro. Tilson and Co.
Lewis Levy	Schrader	Jenner, sued, &c.	Dt. Tatham and Co.
James Burn	Denton	Young and another	Pro. Tyke
J. A. Jones	Jones	Lewis	Pro. In person
M. H. Gregory	Jones and others	S. J. Birkett and another	Pro. Oliverson and Co.
Wm. Whalley	Zabinisky	Burroughes	Dt. Roberts
Hall and D.	Bowell	Cross and others, executrix and executors	Dt. Cross
Donne	Brookes	Moojen	Pro. Crickmore
Kempster	Coleman	Smith	Dt. Towsey
M'Duff	Tomlins	Waller	Pro. In person
Hodgson and B.	Lang	S. J. Lord Claud Hamilton	Pro. Geo. Ogle
Blower and Co.	Hawker	Duberly	Dt. Gregory and Co.
Ashurst and Son	Wigan	Gadderer	Pro. Lewis
H. H. Poole	Pocock	Cherry	Dt. Willoughby and J.
Carlon and H.	Turquand	Dolman	In person.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 2, 1848.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

CONSOLIDATION AND AMENDMENT OF THE BANKRUPT LAWS.

It appears from the Report of the Committee of the Liverpool Law Society, printed in a recent number, (*ante*, p. 27,) that the society specially appointed four of its members to consider and watch the progress of the bill sintroduced in the last Session by Lord Brougham in the House of Lords, and Mr. Bouverie and Mr. Baines in the Commons, for the consolidation and amendment of the Law of Bankruptcy. We could scarcely suggest any question in which the legal profession and the public generally are more profoundly interested than in the practical improvement of this branch of the law, and we earnestly hope, that before the commencement of the next Session of Parliament, every Law Society in the kingdom[a] will have followed the example of the Liverpool Society, and specially delegated to some of its members the duty of co-operating and communicating with other established societies in reference to the proposed changes. The nature and extent of the contemplated alterations, and the spirit in which the inquiry is conducted, will be rendered more intelligible and better appreciated, when we have shortly stated what has been already done, and what it is proposed to do immediately after the reassembling of parliament.

It is probably in the recollection of most of our readers, that the bill submitted to the House of Lords, at an advanced period of the Session, was referred to a select committee, which sat fifteen days consecutively, and examined the following witnesses. We give the list of witnesses in the order in which they were examined, as we find it prefixed to the printed minutes of evidence, and without any regard to the station of the witnesses or the comparative importance of their testimony :—

Joshua Evans, Esq.
John S. M. Fonblanque, Esq.
Robt. G. C. Fane, Esq.
Edward Holroyd, Esq.
Edward Goulbourn, Serjeant-at-Law.
Edward Cooke, Esq.
Henry P. Hope, Esq.
Hatton A. Stansfield, Esq.
Mr. Alderman Farebrother.
Mr. Wm. Thackeray
John Dillon, Esq.
William Hawes, Esq.
John H. Pollock, Esq.
John Hawkins Elliott, Esq.
Henry John Shepherd, Esq.
John Curtis, Esq.
Charles Sturgeon, Esq.
Mr. Alderman Lawrence.
James Morris, Esq.
Henry J. Prescott, Esq.
Christopher Kerr, Esq.
Rich. Groucock, Esq.
Samuel Gurney, Esq.
Joshua Mayhew, Esq.
Mr. Cannan.
Mr. John Laidman.
John Ingram Travers, Esq.
Henry Morgan Vane, Esq.
James Manning, Serjeant-at-Law.
George Jay, Esq.
James Wm. Freshfield, Esq.
Mr. John Peter Gaslot.
Frederick John Reed, Esq.
Joseph Maynard, Esq.
Edwd. Lawrance, Esq.
Mr. Seymour Teulon.

Upon analysing this list, it will be found to contain the names of thirty-six witnesses, examined before the committee, comprehending thirteen who are engaged in mercantile and trading pursuits, eleven holding official situations in the Court of Bankruptcy, three barristers, and nine attorneys and solicitors. The Select Committee concluded its sittings on the 3rd August last,

[a] This course has been already, we understand, pursued in the Incorporated Law Society and the Metropolitan and Provincial Law Association.

and shortly after presented the following report, which sufficiently indicates the scope and objects of the investigation, so far as it has yet proceeded, without attempting to estimate the relative weight or force of the testimony adduced in affirmation or contradiction of any of the proposed alterations. Undue importance, perhaps, is attached in this report to the acquiescence of the witnesses in certain propositions, adroitly suggested in the course of the examination, and concurred in without much apparent previous consideration, or any very clear notion of their relevancy, and some topics of considerable importance referred to by witnesses are altogether unnoticed; but with these qualifications, the report cannot be pronounced deficient in fairness or accuracy.

After referring to the number and character of the witnesses examined, the report proceeds as follows:—

"Upon some points, both of the existing Law of Debtor and Creditor, and of the changes proposed in the Bill, there has been an entire concurrence of opinion and of evidence in all the witnesses examined.—Upon other points there has been a difference of opinion greater or less.

"To the former head belongs the subject of the change in Bankruptcy Administration, instituted by the act of 1831. All the opinions and all the evidence, without any exception, are in favour of that new system, as a great improvement and universally approved by the mercantile world. There is the same unanimity of opinion and evidence in favour of the proposed extension of the jurisdiction of the Commissioners, so as to retain the appeal within the Bankrupt Court, subject to ultimate review of the Great Seal; of the conferring upon them, under proper guards, a direct power of penal jurisdiction; of the change in the procedure by abolishing the fiat and substituting a direct petition to the Court; and of other changes proposed by the bill. There is likewise the same agreement of opinion in considering the proposed Digest as a valuable addition to the Statute Law.

"To the head of points on which there is a difference of opinion, belong the important subject of Arrest on Mesne Process, and the late acts respecting Protection to Insolvents: the effects of these changes in the law upon the Security of Creditors, upon the Protection of unfair Debtors, upon the enabling Fraud to be practised, upon the postponing Declarations of Insolvency by persons whose circumstances are failing. There is also a great diversity of opinion on the very important and difficult subject of assimilating the Law touching Traders and Non-traders, and consolidating under one Court the Administration of that Law.

"Upon these important subjects great discrepancy of opinion and of evidence exists; and there is some, though not considerable, exceptions to the general concurrence of opinion in favour of the transfer to the Court of the Power of granting Certificates. There is hardly any difference of opinion in respect of the propriety of paying the official assignees in a different manner, so as to equalize the profits more nearly, and yet to give a due stimulus to the activity of each.

"There seems as considerable a concurrence in favour of the course proposed, that the balance sheet should be made out in the official assignee's office, and that he should have a reasonable remuneration for this increased work and labour. Under these circumstances the committee recommend that the bill to them referred should not be further proceeded with during the present Session, but that as early as may be in next Session, this committee, or any other to be named by the House, should further proceed to consider the matters on which the discrepancy above referred to exists, and on which they are not at present prepared to report any opinion to the House."

The consideration of the various alterations suggested in this document, and an examination of the evidence bearing upon them, which occupies in the printed Blue Book nearly three hundred pages, will be more conveniently treated of hereafter. At present we are chiefly desirous to direct attention to the concluding recommendation of the report, and to announce that we understand it is intended, in conformity with that recommendation, to re-introduce the bill already submitted to the House of Lords, at the first practical opportunity, and also to move for the re-appointment of the select Committee, with a view of proceeding with and concluding the investigation at such a period of the next Session as to afford time for the discussion of a measure intended to comprise many extensive alterations. During the sitting of the Lords' Committee in July last, it was attended daily and continuously, by a special deputation appointed by an association representing the metropolitan, banking, trading, and mercantile community. The London Commissioners of Bankruptcy, and other officers of the Court, appear also to have been continually present, and to have taken an active share in the inquiry; but although, as above intimated, the Committee had the advantage of hearing the opinions of more than one solicitor of the highest reputation, and the most extensive knowledge and experience upon the subject of inquiry, the gentlemen examined, connected with that branch of the profession, appear for the most part to have limited themselves to replying to the questions addressed to, and affording the information required from,

them, and do not appear to have considered it as falling within their province on this occasion to regard the various alterations suggested with any view to their peculiar bearing and effect upon the interest of the legal profession combined with that of the public. The expediency of devising some means by which the interests of the profession should be more directly attended to, when the select committee shall be re-appointed, is a question which may not be considered undeserving of attention, and upon which we shall gladly receive any suggestions.

The manner in which the inquiry was conducted, the relative merits of the various alterations suggested in the Report of the Lords' Committee, and the substance and bearing of the evidence, will form the subject of commentary in an early number.

RIGHT OF ATTORNEYS TO PLEAD IN THE BANKRUPTCY COURTS.

An important point has been raised in the last number of the "Law Review," on the right of attorneys and solicitors to practise as advocates in the Court of Bankruptcy. The article in which this question is put forward is entitled "The Province of the Bar," and the learned writer, who evidently aims at ousting the attorneys from all possible opportunity of appearing in a forensic character, thus delivers himself:—

"In some instances of modern statutes, attorneys and solicitors have been expressly recognized in the character of advocates, *e. g.*, the bankruptcy Court Act, (1 & 2 W. 4, c. 56, s. 10,) whereby attorneys and solicitors were empowed to appear and *plead* in bankruptcy proceedings *without employing counsel*, and the Prisoners' Counsel Act, which gives attorneys the privilege of examining and cross-examining witnesses on summary proceedings before Justices of the Peace, (6 & 7 W. 4, c. 114). It is worthy of remark, that *the above provision with respect to the proceedings in bankruptcy is now repealed*, and that it may still be a question whether attorneys, or in fact any other class of persons besides members of the Bar, are strictly entitled to appear and act as advocates before the Bankruptcy Commissioners."

The authority for this doctrine is "6 & 7 Vict. c. 73, schedule 1;" the words in which are, as to the extent of *saving*,—"The whole, except so much as relates to the admission and practising of attorneys and solicitors in the said Court." The learned writer, in his zeal to support his main argument—that attorneys should not be allowed to appear as advocates in any Court, inferior or otherwise,—has fixed his attention solely on the *schedule*, and omitted to look at the more important *body* of the act.

Now, in the 27th section it is thus provided:—"That every person who shall have been duly admitted a solicitor of the High Court of Chancery shall be entitled to be admitted as a solicitor in any Inferior Court of Equity *and in the Court of Bankruptcy*, upon *signing the Roll* of such other Court, and shall thereupon be *entitled to practise as a solicitor therein*, in like manner as if he had been sworn in and admitted a solicitor of such Court."

It was manifestly the object of the act to consolidate and simplify the previous enactments; and accordingly we find that all the former statutes relating to the admission of attorneys and solicitors are repealed, and one uniform rule made applicable to all the Courts of Law and Equity, the Courts of Bankruptcy, and the Inferior Courts. Before the 6 & 7 Vict. c. 73, it was necessary for an attorney or solicitor to take the usual oaths and pay fees of admission in all the Courts. It is now required that one oath only be taken in a Superior Court of Common Law, and one in Equity, and then the attorney or solicitor is entitled, on *signing* the Rolls of the other Courts, to be admitted, and practise as if admitted, in such Courts.

A little more attention to the terms used in the schedule to the act than has been vouchsafed, would have shown that no such repeal as the writer has inferred could be intended, for it applies only to the "admission and *practising*," not to the "*appearing and pleading*" in bankruptcy, which are not only unrepealed, but are expressly *saved*, even in the schedule, independently of the body of the act.

We are then told in another part of the same article of the Law Review, that this permission to attorneys and solicitors to practise in the Bankruptcy Courts has been *abused*. By which intimation we understand that attorneys have not merely sued out fiats and conducted the routine business before the Commissioners, to obtain an adjudication of bankruptcy, *including the advance of* 30*l.* *or* 40*l.*, (which will probably be pardoned,) but they have ventured occasionally to address the Commissioner in opposition to "counsel learned in the law," who have appeared to support objectionable debts or objectionable claims of a bankrupt

to his certificate; and moreover, they "assume to act *merely as advocates*, regularly receiving briefs from other attorneys." That is, they "appear and plead" in the terms of the act for creditors who are not ordinarily their clients, but for whom they are specially retained either by such clients or their regular solicitors.

The objection seems founded in mistake. The notion is, that the bankruptcy solicitor is not properly retained. It is forgotten that in these bankruptcy matters a solicitor, like a barrister, may be retained, removed, or again retained, without any order to change the solicitor; and surely one solicitor may act for another in bankruptcy matters as he does in suits in equity and in actions at law, without infringing any professional rule.

The learned Editor of the Law Review appears to have permitted some correspondent or contributor to descant on a subject for which he seems not sufficiently to have prepared himself. There are other views also in the "Province of the Bar" to which we shall have occasion to advert.

COPYHOLD ADMISSIONS OUT OF COURT.—STAMPS AND FEES.

ADMISSIONS.

To the Editor of the Legal Observer.

SIR,—The letter of "A Young Steward," in your Number for 21st October, induces me to add a few remarks to those before sent on the above subject.

There are doubtless many cases in which it is desirable to have admission taken out of the manor, and as no authority appears to be given by statute to hold a Court out of the manor, the admission out of Court may be often required. The inconvenience of having to prepare an admission out of Court in a formal manner, before the actual grant of admission, will be but trifling, if instructions for admission, in the form I suggest at foot, be previously obtained, and the steward thereby enabled to admit the claimant by one of the steward's clerks as the attorney, the formal admission, with the entry in the Court Rolls not requiring more time for their preparation than a very short deed.

When time so presses that the preparation of the admission would occasion inconvenience to the parties, the admission may be completed (as far as the tenant's estate is concerned,) in a few minutes, by the steward, or any gentleman who can attend within the manor as his deputy, holding a special Court; and no formal authority is required for the so acting as deputy.

As I see from the letter of your correspondent that his acquaintance with Court keeping is rather limited, and I feel much interest in the subject, if he will send me, through you, a statement of any further difficulty he has experienced, I shall have pleasure in giving him such suggestions as I think may be of service to him in his stewardship.

I send four forms of the more ordinary admissions out of Court.

R. R.

FORM OF INSTRUCTIONS FOR ADMISSION.

Manor of ———.

I *C. B.*, of, &c., [*residence and description*,] claim admittance to the premises copyhold of the above manor, to which *A. B.*, deceased, stood admitted at the time of his decease, as his only son and heir, [youngest son and heir according to the custom of the said manor, *as the case may be*]. And I request you, the steward of the above manor, to forthwith admit me tenant out of Court by such person as you may direct to act as my attorney in that behalf.

C. B.

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To Mr. *E. F.*, Steward of the above Manor.

[If the admission should be under a surrender, the instructions would be simply a request to admit by attorney, as above, to the premises surrendered to his use by *A. B.* If under a devise, the instructions should state the claim as devisee under the will; referring to an accompanying copy of the will, or of the parts affecting the property, with the date of the will, the reference to the Court in which proved, and the date of proof would also be advisable.]

FORMS OF ADMISSION OUT OF COURT.

No. 1. *Heir before Proclamations.*

(*a*) Manor of } The day of in the } year of our Lord 18 .

(*b*) WHEREAS *A. B.*, a copyhold tenant of this manor, died since the last Court holden for this manor. (*c*) Now, on this day of instant, cometh out of Court before [*E. H.*, Deputy Steward, for this purpose, of *G. H.*, Steward of the said Manor,] *C. B.*, of, &c., only son and heir [*or* youngest son and heir, according to the custom of this manor,] of the said *A. B.*, deceased, [by *J. K.*, gentleman, attorney of the said *C. B.* in this behalf, *if by attorney*,] and prayeth to be admitted tenant of the hereditaments, copyhold of this manor, to which the said *A. B.* stood admitted at the time of his decease, (that is to say,) (*d*) ALL, &c., [*add description*] which hereditaments the said *A. B.*, deceased, took up to him and his heirs at a Court held for this manor, on, &c., after the death, and under the will of, &c., [*as the case may be*,] as by the entry of that Court, reference being thereunto had, will more fully appear. (*f*) To WHICH said *C. B.*, (by his said attorney,) the Lord of the said Manor, by the said [Deputy] Steward, doth by the rod grant and deliver seisin of the

said before described hereditaments. (*g*) To HOLD the same, with the appurtenances, unto the said *C. B.*, and his heirs, of the Lord at his will, and according to the custom of his manor, by Fealty, Suit of Court, and other the rents, duties, and services therefore due and of right accustomed. (*h*) And, saving the rights of the Lord, the said *C. B.* is (by his said attorney) admitted tenant of the said hereditaments, and pays, on such his admittance, a fine, &c. But his fealty is respited until, &c.

[*To be written on parchment on the proper stamp, signed by the Steward, and delivered to the party admitted. No signature by the party admitted is required. The entry in the Court book may be in the same form.*]

No. 2. Heir after Proclamations.

After clause (*a*).

WHEREAS *A. B.*, a copyhold tenant of this manor, did, some time since and at a general Court Baron and Customary Court holden for this manor, on, &c., the first proclamation was thereupon duly made, and at the last like Court holden for this manor the second proclamation was thereupon made, &c. Now, &c., [*as in No. 1 to end*].

No. 3. Surrenderee before Proclamations.

After clause (*a*).

WHEREAS, on, &c., was entered on the Court Rolls of this manor, pursuant to the statute in that case made and provided, an absolute surrender in writing that day taken out of Court before, &c. WHEREBY, &c., [*state the surrender fully, but an exact copy is not required*]. Now, on this day of instant, out of Court, &c., [see No. 1,] cometh the said *C. D.*, (by *J. K.*, his attorney in this behalf, *if so*,) and prayeth to be admitted tenant of the hereditaments so surrendered to his use, and described as aforesaid, [*if surrender in general terms, after* "use" *add* "that is to say," *and insert description*]. [WHICH hereditaments the said] took up, &c., [No. 1, cl. (*e*).] To WHICH, &c., [as in clause (*f*), adding after "described," the words "and mentioned to have been surrendered."] To HOLD, &c., [clauses (*g*) and (*h*).]

No. 4. Surrenderee after Proclamations.

The same as No. 3, with the addition of the following recital, after stating the surrender:—"And whereas, at a general Court Baron and Customary Court holden for this manor, on, &c., the first proclamation was made for the said *C. D.* to take admission under the said surrender, and at the last like Court holden for this manor the second proclamation was in like manner made, &c.

STAMPS ON COPYHOLD ADMISSIONS.

To the Editor of the Legal Observer.

SIR,—Having had some experience in copyhold practice, I must beg to differ with the doctrine laid down by you in your Note to Readers and Correspondents, in the Number of the 26th August, and which has been adverted to in the subsequent Numbers by "Civis" and "R. R." The Act of 4 & 5 Vict. c. 35, provides for Courts being held, although no copyhold tenant be present,—for granting admissions out of the manors, and out of Court, and for entering *forthwith* on the Rolls every surrender and every fact proved at any Court whereat a homage shall not be assembled, but does not provide any *form* of entry, or contain the slightest allusion to the stamp duties. A reference to the Stamp Act, 55 Geo. 3, c. 184, will satisfy any one that the duty must be impressed *on the copies* and *not* on the admissions themselves, and *on surrenders, if taken out of Court*, or *copy* if in Court.

A STEWARD'S CLERK.

FEES ON COPYHOLDS.

On the admission of *three trustees* under a will of a copyhold tenant, the lord of the manor is legally entitled, where the fines are arbitrary, to three fines, that is, two years on the first life, one year on the second, and half a-year on the third.

On the same principle, I wish to know whether stewards adopt the same rule as to their fees, and take first one set, then half, and then a quarter; and whether there is any legal decision on the question?

As the steward, by the admission of three tenants, will be debarred of his fees until after the death of all of them, such a principle seems reasonable.

A SOLICITOR.

BARRISTERS CALLED.

Michaelmas Term, 1848.

LINCOLN'S INN.

Robert Capel Cure, Esq.
William Henry Hodgson, Esq.
Robert Thomas Kent, Esq.
Henry Philip Roche, Esq.
Charles Sargent, Esq.
Thomas Joseph Hercy, Esq.
Robert Hayston Frank, Esq.
Arthur Benthall, Esq.
Alfred Hill, Esq.
Algernon Bathurst, Esq.
Benjamin Gray, Esq.
Henry Dickinson, Esq.
Thomas Rawlinson, Esq.
William Augustus Marsh, Esq.

INNER TEMPLE.

Alexander Clark Forbes, Esq.
Charles Cotton Ferard, Esq.
R. E. R. Ramsay, Esq.
Michael Haynes, Esq.

MIDDLE TEMPLE.

W. H. G. Bagshawe, Esq.
J. Dunne, Esq.
A. Levy, Esq.
W. M. Cooke, Esq.
A. T. P. Doran, Esq.
F. L. Dowling, Esq.
W. R. Neville, Esq.
E. G. Hornby, Esq.
P. F. O. D'z de Charmoy, Esq.
W. A. Clark, Esq.
G. M. Hicks, Esq.
H. C. Mules, Esq.

GRAY'S INN.

William Tyndall Barnard, Esq.

THE LEGAL YEAR-BOOK AND DIARY FOR 1849.[a]

DURING many years, a small annual volume, called "The Legal Almanac, Remembrancer, and Diary," was published in connection with the Legal Observer, adapted particularly for the use of solicitors. Last year the work was much enlarged in its plan and contents, under the title of *The Legal Year-Book, Almanac, and Diary*, and a renewed edition has just been published for the ensuing year.

The Contents of the work are as follow:—

I. *The Kalendar and Time Table.*

Law Kalendar; Regulations of the Terms and Vacations, and Return of Process; Orders in Chancery regulating Holidays, Attendance, and Vacations; Times of Procedure; Statute and Rule regulating Common Law Holidays; Law Offices, and Times of Attendance; &c., &c.

II. *Parliament.*

Statutes effecting Alterations in the Law, (with Notes,) 11 & 12 Vict.

Government.—1. Crown and Government Security; 2. Suspension of the Habeas Corpus Act (Ireland); 3. Removal of Aliens; 4. Parliamentary Electors' Rates; 5. Trial of Controverted Elections; 6. Trial of Election Petitions.

The Courts.—1. Oaths in Chancery; 2. Joint-Stock Companies Winding-up; 3. Stamp Duties Assimilation; 4. Petty Bag Office in Chancery; 5. Bankrupts' Release; 6. Insolvent Debtors' Court; 7. Insolvent Debtors (India); 8. London Small Debts; 9. Evidence of Proclamations of Fines; 10. Regulating the Queen's Prison.

Poor Law.—1. Poor Removal Orders; 2. Poor Removal; 3. Poor Law District Schools; 4. Stock in Trade Exemption; 5. Parochial Debts and Audit; 6. Poor Law Union Charges; 7. Poor Law Auditors' Proceedings Restriction.

Law of Property.—1. Payment of Debts out of Real Estate; 2. Drainage Certificates; 3. Commons' Inclosure Act Amendment; 4. Commons' Inclosure; 5. Turnpike Acts' Continuance; 6. Highway Rates; 7. Game Certificates.

Ecclesiastical.—1. Ecclesiastical Districts; 2. Ecclesiastical Jurisdiction; 3. Ecclesiastical Commissioners.

Criminal Law.—1. Administration of Justice by Magistrates out of Sessions; 2. Summary Convictions and Orders by Magistrates; 3. Protection of Justices; 4. Amendment of Criminal Law; 5. Removing Defects in Administration of Criminal Justice; 6. Prisons.

General.—1. Public Health; 2. Passengers by Sea; 3. Annual Indemnity; 4. Loan Societies; 5. Slave Trade; 6. Metropolitan Sewers; 7. Railways; 8. Local Acts; 9. Borough Incorporation.

Lists of Local, Personal, and Private Acts; General Index to the Public Statutes; Standing Orders relative to Private Bills; Lawyers in Parliament; &c., &c.

III. *The Courts.*

New Rules and Orders, 1847-8; Judges and Officers in all the Courts; Magistrates and Law Officers of London; Recorders; Coroners; Clerks of the Peace; Magistrates' Clerks.

IV. *Commissioners.*

Commissioners of Public Boards; Perpetual Commissioners for taking Acknowledgments of Married Women, &c.

V. *The Bar.*

The latest Regulations of the Inns of Court for the Admission of Students and Calling to the Bar; Queen's Counsel and Serjeants in order of Precedence; Barristers called, 1847-8.

VI. *Attorneys and Solicitors.*

Examination Rules and Practical Directions; Renewal of Attorneys' Certificates; Annual Registration; Examiners; Government Solicitors; Town Clerks; Parliamentary Agents; Incorporated Law Society; Metropolitan and Provincial Law Association; Law Association for the Benefit of Widows, &c.; United Law Clerks' Society; Provincial Law Societies; Plan of Solicitor's Accounts, &c.

VII. *General.*

Law and Commercial Stamps; Regulations for allowance of Spoiled Stamps; Assessed Taxes; Distribution of Intestates' Estates; Expectation of Life; Rates of Insurance; Post Office Regulations; Tables of Interest, Wages, &c.; Transfers and Dividends; Bankers; Legal Obituary; Annual Summary of Legal Business, &c. &c.

[a] Published by Alex. Maxwell & Son, Law Booksellers and Publishers, 32, Bell Yard, Lincoln's Inn.

VIII. *Diary for* 1849,

Enlarged and Improved, with Notes of Business to be transacted, and Times of Proceeding, under numerous Statutes, Legal and General, &c.

ATTORNEYS' CERTIFICATE DUTY.

To the Editor of the Legal Observer.

SIR,—Some three or four years ago I addressed letters to you on the subject of the Attorneys' Certificate Duty, with its origin and history. You did me the favour to insert them in your useful publication. I then suggested an alleviation, by the government placing a small duty upon all parchment used in legal proceedings, or deeds, of any kind; which expedient might be found to replace the deficiency that would occur in the public revenue, by a total abolition of the Certificate Duty.

Reading in your number of the 4th instant, that "the Bill for the Repeal of the Certificate Duty has already been notified in the proceedings contemplated in the next Session of Parliament, but there are differences of opinion as to the mode of obtaining a remedy;" it occurred to me, that it might be well worth the while of the Committee of the Law Association to employ, at once, some intelligent and experienced calculator; for the purpose of ascertaining what amount is now, and has been for the last seven years, derived to the government by the annual payments of Certificate Duty,* and also what number of writs, judgment-rolls, records, memorials, and deeds were issued and perfected in the course of last year, and the preceding seven years; and so fix the amount and scale of a small duty upon each proceeding and deed. In order to carry this calculation into effect, the number of proceedings in the Courts of Law and Equity might be obtained by the reports, and returns of either House of Parliament; and of the memorials and deeds, from the registries of Middlesex and York, and returns to be made by the offices of largest practice in town and country.

If you consider my suggestion of any worth to your readers, I hope they may tend, by their insertion in your Observer, to lay a firm groundwork, whereon to base a total abolition of the Attorneys' and Proctors' Certificate Duty, by an act to be passed in the next session of parliament.

A. B.

SUMMONING TRADER DEBTORS.

To the Editor of the Legal Observer.

SIR,—Allow me to draw your attention and that of your readers to an important point under the 5 & 6 Vict. c. 122, and the general rules made in pursuance of that act.

Power is given to creditors to summon their debtors, and in the schedule are the forms referred to in the sections. By section 70, it is enacted, "that it shall be lawful for the Commissioners of the Court of Bankruptcy to make from time to time general rules and orders for regulating the *forms* of proceedings (*where not provided for by this act*) and the *practice* to be observed in every Court authorized to act in the prosecution of fiats in bankruptcy."

It will be seen by the General Rules of 12th Nov., 1842, that additions to and variations in the forms given by the act are made. By rule 33 it is ordered, "that any want of compliance on the part of the plaintiff with these rules and orders in the particulars of demands and notice—the affidavit—the summons and service thereof, or in any or either of such matters—shall be deemed a good objection.

Now, a question has arisen, whether the additions and variations contained in the rules are warranted by the act, and it has been asserted by many, and I believe decided by more than one Commissioner in the country, that they are not, and are not binding because the alterations and variations are alterations of the forms given by the act, and not new forms where none were provided; that the power to prescribe forms could only be exercised where none were provided by the act; that a party (if he follows the forms of the act) cannot be prejudiced by the rules, and may disregard them.

On the other hand, it is contended, that the forms in the act are merely sketches; that the alterations and additions are *forms* not provided by the act; that if they do not come under that head they may be sustained under the power as to *practice*; that supposing—*and this is a very important point and goes to the whole subject*—that the rules are an excess of power, a district Commissioner cannot refuse obedience to them, but is bound to give effect to an objection under rule 33, where it is apparent that there is "any want of compliance."

M. M.

[Some of our talented readers or contributors can perhaps throw some light upon this subject.—ED.]

SUGGESTED IMPROVEMENTS IN PRACTICE.

To the Editor of the Legal Observer.

ORDERS TO STAY PROCEEDINGS.—COUNTY COURT PRACTICE.

SIR,—As many theories for the Amendment of the Law are being promulgated, it has occurred to me, that it would be productive of good if the judges at chambers had the power to make orders to stay proceedings on the application of a defendant giving the plaintiff judgment, within the time he could obtain it by proceeding to trial—thus avoiding much useless expense. If such a practice existed, a defend-

* There is already a Parliamentary Return obtained by the Incorporated Law Society, of the amount of the duty to a recent date.—ED.

ant would in many instances be put to less expense than he is at present in proceedings in the County Court. E. G.

DURHAM CHANCERY SITTINGS.

THESE Sittings were held in the Old Court of Chancery, Exchequer Buildings, Durham, on Wednesday, Oct. 25, before the Chancellor, RICHARD TORIN KINDERSLEY, Esq. The business was unimportant; for, although there are several suits pending, yet they have not arrived at the stage for hearing.

The *Chancellor* said, he wished to take that opportunity of mentioning one or two subjects connected with the business of the Court; one of which he would be very glad if the bar would take into consideration. He alluded to the practice existing in this Court. He termed it the practice, because he alluded to the minor details of conducting suits before they arrived at a state to be heard. The practice, as it here existed, was that which formerly prevailed in the Old Court of Exchequer, and also in the High Court of Chancery. A great many changes—he might say reforms—had taken place in the details of practice, making that practice more conformable to the existing usages and systems of social life; and therefore more convenient to the public. The practice of this Court had not undergone any such change; and for his own part, he should be extremely cautious in introducing anything like change, until such change had been previously well considered and found to be beneficial. He would mention one matter, in which he thought an improvement in the practice of the Court might be effected. When a bill was filed, the defendant, or the defendants if there were more than one, was or were entitled, as a matter of course, and without assigning any special grounds, to three distinct and successive times delay in putting in their answer. The first delay was that for which Mr. Heath had moved—eight weeks' time. When these eight weeks were expired, the defendant was entitled, as of course, and without any special ground, to six weeks more, making 14 weeks; and when these 14 weeks were expired, he was entitled, on a third application, and still as a matter of course, to a further time of two weeks, making altogether 16 weeks. Now, it is quite obvious that in 99 suits out of 100—he might say 999 out of 1000—16 weeks' procrastination was altogether unnecessary in the existing state of society, when intercourse was so facilitated, and matters more speedily discussed. Sixteen weeks were unnecessary for all ordinary purposes; and the High Court of Chancery had altered the practice in this respect, and had introduced this rule—that the defendant was entitled, as a matter of course, to eight weeks' time; and when these eight weeks were expired, he could shew that the cause was such as really to require more time; then he made his application, and if he could satisfy the Court—or the Master rather, because an application of that sort was made to the Master—then time was granted according to the exigencies of the case. He was not now suggesting the precise degree of change: but he wished it to be considered whether they might not, at all events, do this—that supposing it was expedient to keep up three times for putting in an answer, each of those times might undergo some degree of limitation; and instead of 16 weeks, there should be a shorter time between each application, so as to get in an answer within a reasonable time. He mentioned this, not as having determined on any change, but as an illustration of the sort of change and improvement which he thought might take place with great advantage to this Court. If the Attorney-General and the bar should think fit to assist him in this matter with any suggestions as to that or any other amelioration in the details of the practice of the Court, he should be extremely grateful to them, and should take them into his earliest and best consideration. He mentioned them now, for the purpose that such consideration might be given to them; for there was a vast number of instances in which changes might be beneficially made. It would be desirable that, as far as circumstances would admit, the practice of this Court should be assimilated to the practice of the High Court of Chancery; and, therefore, if the bar, or any one who took an interest in the proceedings of the Court, would favour him with their suggestions, he should readily adopt them, if they were likely to act favourably to the parties interested. There was another subject, which was, however, a minor one—that was, the convenience of the bar, as far as concerned their attendance at this Court, and the day on which the annual sitting—supposing it should continue annual—should be held. Last year and this the Court had been held on the 25th of October. Last year it fell on a Monday, and this year on a Wednesday; and the question was, which was most convenient to the bar—that it should be heard every year on the 25th of October, or on the Monday or Tuesday next after the Michaelmas Sessions? Which day soever the bar thought most convenient he should be glad to adopt; and he would determine then, if the Attorney-General and the bar pleased, on what day the sitting should he held next year.

The *Attorney-General* said, his friend, Mr. Heath, and other gentlemen whom he had consulted, and himself, were certainly all of opinion that the Monday after the Sessions would be the most convenient day for the bar to attend these sittings. In the long vacation, the bar were widely dispersed, but they again met together for the October Sessions, and he was sure that the gentlemen who thus met on the preceding week would be glad to attend these sittings. He believed the paucity of attendance of barristers to-day was owing to some slight mistake as to the time of holding the Court. Alluding to what his Honour had just mentioned, so far as he (the Attorney-General) could form a judgment, the suggestion that his

Honour had made was likely to be extremely beneficial, as, whilst it would give parties brought before the Court due opportunities to prepare their defence, yet it would prevent proceedings from being unduly protracted. When he went back to town, he should consult the other barristers, and he should avail himself of the privilege of communicating with his Honour, if anything occurred to them which was likely to further the views his Honour had stated.

The Monday after the Sessions was, after some further conversation, agreed on, and the Court adjourned.

ANECDOTES OF THE LORD CHIEF JUSTICE TINDAL.

To the Editor of the Legal Observer.

SIR,—Some nine or ten years since, I was attending the assizes at Chelmsford, and obtained lodgings in the High Street, at the house of a silversmith and jeweller, who had resided there almost from childhood. The Chief Justice had been sitting in a crowded Court the whole day, presiding on the trial of a heavy case, which terminated about half-past five. In the course of the evening, as I was conversing with my respected host, who had been amusing me with a description of Garrow's gaieties and good-nature, I was delighted to see the Chief Justice enter, quite alone, and shake hands cordially with my landlord, inquiring kindly after his health and family, and expressing his respect, adding "I have had the pleasure of knowing you nearly all my life." The quiet, unaffected, and cordial manner in which this visit was paid, after a hard day's work, struck me as very characteristic of this learned, pious, and amiable Chief Justice. I was informed that he frequently peeped in upon the old inhabitants of Chelmsford in this way.

His lordship, when at the bar, argued the famous case of *Ashford* v. *Thornton*, upon the question of Wager of Battel, involving much black-letter law. Mr. Tindal was then a junior barrister, and was opposed to Mr. Chitty. I was attending in the students' box, and remember the formidable array of books, some in vellum, and some in dark bindings, from which, with a clearness and an earnestness that fascinated all who heard him, the future Chief Justice of Common Pleas, supported his argument. There was a gentlemanlike melancholy about his countenance, and a deep pathos in his voice, which may well be understood, if it be true (as was stated) that he had that morning come from the chamber of death, having been bereaved of his wife; and yet such was his strength of mind, that he had caused no application to be made for postponement of the argument, involving as it did a question of life or death.

His lordship latterly used to spend a portion of his vacations in solitary pedestrianism, on the Hampshire coast, just off the Needles. I remember meeting him one morning after a shipwreck, as he was wending his way towards the spot, carelessly dressed in a rough-weather blue great-coat, and probably going to make inquiries preliminary to some relief to the unfortunate persons who had been shipwrecked over-night. So completely was the Chief Justice disguised by his *negligée* dress, that I had some difficulty in recognising him. His acts of benevolence were there spoken of by the villagers, who called him "Judge Tindal."

One of the Leamington people told me, that his lordship, in starting for his walks, invariably went through the picturesque churchyard, through which he also usually returned. The churchyard was situated on an eminence, and several yards out of his lordship's direct tract, but it was just such a spot as Gray would have chosen for his elegy.

The Chief Justice was quite an admirer of Shakspeare. I remember in a charter-party case at Guildhall, his happy allusion to the "still-vexed Bermoothes;"* a question having arisen in the progress of the trial as to the coast and climate of Bermuda.

If you think these slight reminiscences interesting as addenda to your notice of the late Chief Justice, in your last volume, p. 483, and to the ample memoir given in another part of your work, they are heartily at your service.

J. H. C.

LIST OF PRIVATE ACTS,

WHEREOF THE PRINTED COPIES MAY BE GIVEN IN EVIDENCE.

1. An Act to authorise the feuing of the Glebe Lands of the parish of Govan in the county of Lanark.

2. An Act for authorising the Trustees of the Will of the late Calmady Pollexfen Hamlyn, Esquire, under the Direction of the Court of Chancery, to pull down the Mansion or Dwelling House at Paschoe in the county of Devon, Part of the Estates devised by the said Will, and to rebuild the same, and to raise Money for those Purposes by Mortgage of the said Estates; and for making Provision for the Payment of the Principal Monies so raised; and for other purposes.

3. An Act for confirming an Exchange of certain Lands in the parish of Wilton, in the county of Somerset, heretofore Part of the Augmentation of the Perpetual Curacy of Hill Bishops otherwise Bishops Hull, in the same county, for certain Lands in the parish of Staplegrove in the same county, and for other purposes.

4. An Act to authorise the Sale to the Right Honourable George Harry, Earl of Stamford and Warrington, of certain Freehold and Leasehold Hereditaments in the county of Salop, devised by the Will of Polly Hale, widow, deceased, and for directing the Investment of the

* Tempest.

Purchase Money in other Hereditaments, to be settled in like manner.

5. An Act to authorize Grants in Fee and Leases for long Terms of Years, for Building Purposes, of the devised Estate of John Newton, Esquire, deceased, situate at Gorton in the parish of Manchester in the county of Lancaster.

6. An Act for enabling Sales, Leases, and Mortgages to be made of certain Estates in the county of York, heretofore belonging to John Fullerton.

7. An Act to enable the Trustees of the Will of Edward Jessop, the elder, to sell the Estates devised by such Will, and to lay out the Money to arise therefrom in the Purchase of other Estates under the Direction of the Court of Chancery.

8. An Act for enabling Leases and Sales to be made of an Estate at Horton in the parish of Bradford in the county of York, holden upon the Trusts of the Will of Jacob Hudson, deceased.

9. An Act to enable Sir William Miller of Glenlee and Barskimming, Baronet, Heir of Entail in possession of the Lands and Estates of Glenlee, Barskimming, and others, lying in the stewartry of Kirkcudbright and county of Ayr, to exchange certain Portions of the said Estates, and to sell certain Parts thereof, for the Payment and Extinction of the Debts, Obligations, and Burdens affecting the same.

10. An Act for incorporating the Governors and Trustees of the united Charities of Nathaniel Waterhouse, appointed by virtue of an Act passed in the 17th year of the reign of King George the Third, intituled "An Act for uniting and better regulating the Charities of Nathaniel Waterhouse within the town and parish of Halifax, in the West Riding of the county of York;" and amending the Powers and Provisions of the said Act, and granting other Powers and Provisions enabling the Governors and Trustees of the said united Charities, when incorporated, to sell and to convey Parts of the Lands of the Charity Estates, make Exchanges of the Lands of the said Estates for other Lands, lease Mines, fell Timber, and effect Improvements; and for regulating the Application of the Revenues, Rents, and Income of the said Estates, and enlarging the charitable uses of the said Charities; and for other purposes concerning the same.

11. An Act to provide for the better Administration of certain Charities in the parish of Sandback in the county of Chester, and the Distribution of the Income thereof, and for vesting the Estates and Property belonging to the Charities in new Trustees, and to enable the Trustees to grant Leases of the Charity Estates; and for other purposes.

12. An Act to alter and amend an Act passed in the 8th and 9th years of the reign of her present Majesty, for enabling the Trustees of the Will of Francis, late Duke of Bridgewater, to carry into execution certain Articles of Agreement entered into by them with the Right Honourable Francis Egerton, now Earl of Ellesmere.

13. An Act for the Sale of the Glebe Lands belonging to the Rectory of Woolwich and the Parish Church of Saint Mary Woolwich in the county of Kent, and to confirm the Building Leases of such Lands, and for Endowment of a new Ecclesiastical District; and for other purposes.

14. An Act for extending certain Powers of an Act passed in the 8th year of the reign of her present Majesty, intituled "An Act for enlarging the Powers contained in the Will of Sir John Ramsden, Baronet, deceased, to grant Leases of the Hereditaments in the Townships of Huddersfield, Honley, Dalton, and Almondbury devised by such Will, and for other purposes," to the Hereditaments in the parishes of Almondbury, Kirkheaton, and Huddersfield, comprised in the Settlement made on the Marriage of John Charles Ramsden, Esquire, deceased, and for other purposes."

15. An Act to authorize the granting of Building Leases for 99 years of Parts of the Trust Estates of the Will of the late Charles Robert Blundell, Esquire, situate in the parishes of Sefton, Walton-on-the-Hill, and North Meols in the county of Lancaster, and to lease Waste Lands and Coal and other Mines, and to exchange certain detached and intermixed Lands, other Parts of the said Trust Estates.

16. An Act for granting Building and other Improvement Leases of the Settled Estates of the Right Honourable George Augustus Frederick Charles, Earl of Sheffield, situate in the parishes of Newhaven and Bishopstone, in the county of Sussex.

17. An Act to amend a Settlement made by the Most Honourable the Marquess and Marchioness of Londonderry and the Honourable Viscount Seaham; and for other purposes therein mentioned,

18. An Act for compromising certain Suits and Claims affecting Parts of the Estates of the late Marquess of Antrim, and for settling certain Lands intermixed with Parts of such Estates.

19. An Act for vesting the Two undivided Sixth Shares of Christopher Alderson, a Lunatic, and Mary Alderson, Spinster, a Person of unsound Mind, as Two of the Six Children of Christopher Alderson Alderson, deceased, in certain Freehold Estates in the counties of Middlesex, Hertford, and York, in Trustees, in whom the other Four undivided Six Shares are now vested, upon Trust for Sale.

20. An Act to alter and amend certain Powers of leasing contained in the last Will and Testament of the late Most Honourable John Crichton Stuart, Marquess of Bute and Earl of Dumfries, deceased.

21. An Act for altering an Act made and passed in the Session of Parliament held in the 9th and 10th years of the reign of her present Majesty Queen Victoria, for enabling the Master and Brethren of the Hospital of Saint Mary the Virgin within the borough of Newcastle-upon-Tyne to grant Leases of their Estates; and for other purposes.

22. An Act for the Relief of the Right Hon-

ourable Richard Earl of Glengall, in respect of his Estates in the counties of Waterford and Tipperary in Ireland, and for vesting the same Estates in Trustees for effecting such relief.

NOT PRINTED.

23. An Act for the Restitution in Blood of William Constable Maxwell, Esquire.

24. An Act to dissolve the Marriage of Edward Heneage, Esquire, with Charlotte Frances Ann Heneage his now wife, and to enable him to marry again; and for other purposes.

25. An Act to dissolve the Marriage of Robert Nicholson, Esquire, with Frances Nicholson his now wife, and to enable him to marry again; and for other purposes therein mentioned.

26. An Act to dissolve the Marriage of the Reverend Frederick Grueber Lugard, Clerk, with Grace Price Lugard his now Wife, and to enable him to marry again; and for other purposes.

27. An Act to dissolve the Marriage of William Jervis, a Captain of the 42nd Regiment of Bengal Native Infantry, and Paymaster and Superintendent of Native Pensioners at Barrackpore, in the province of Bengal in the East Indies, with Mary Amelia his now Wife, and to enable him to marry again; and for other purposes therein mentioned.

NOTES OF THE WEEK.

BUSINESS OF THE TERM.

THOSE who have been long acquainted with Westminster Hall, describe the Term, which concluded on Saturday last, as the dullest, and least interesting, remembered for many years. The quantity of *new* business appears to have been greatly below the usual average; both in the Equity and Common Law Courts. The latter are usually occupied to a very advanced hour, on the last day of term, but on Saturday last, the Common Law Courts rose at the usual hour, having dispatched all the business waiting for a hearing.

NISI PRIUS SITTINGS.

The Sittings at Nisi Prius after Term commenced on Monday. In the Queen's Bench, the Remanets entered amount to 166, but the entry of New Causes is not extensive. In the Common Pleas, there were 55 Remanets and 39 New Causes entered at the commencement of the Sitting; whilst in the Exchequer, the Causes entered after last Term and remaining untried were 84, and the Causes entered for trial at the Sitting after this Term, 61.

ILLNESS OF CHIEF JUSTICE WILDE.

We are gratified to be able to announce, that the learned Chief Justice of the Common Pleas, who was absent from Court during a great part of the term from indisposition, was so far recovered as to take his place on the Bench on the last day of Term. The Chief Justice has since been presiding at the Sittings of the Court of Error, in the Exchequer Chamber.

PRACTICE OF RETAINERS.

A Special General Meeting of the Members of the Incorporated Law Society was held at their Hall, on Wednesday last, the 29th Nov., to take into consideration the proposed Rules of Practice relating to the Retainer of Counsel, with a view to their adoption by the profession. A copy of these rules has already been laid before our readers. Some alterations have since been made, and the whole were passed unanimously. We hope to give the Report of the Council with the amended Rules and the Resolutions of the Meeting, in our next number.

A book lies at the Society's Hall for the signatures of the Members of the Society and of the profession generally.

MICHAELMAS TERM EXAMINATION.

At the recent Examination of Articled Clerks, in order to secure a due consideration of the questions, the Examiners determined not to receive any papers till one o'clock, and Master Ray, who presided, addressed the candidates on taking their seats at 10 o'clock; and it appears that his admonition had a good effect, for nearly four hours elapsed before any papers were delivered in, and the result has shown that the time was well applied, for the whole of the candidates on that and the following day were deemed entitled to pass.

Prior to this arrangement, wagers were laid that certain candidates would come up the first and pass, and in several instances an hour and a-half only were devoted to the important duty before them. It was well to prevent such injudicious conduct.

LAW REPORTING.

MANY objections have from time to time been made to the system of Law Reporting. In the early volumes of the *Legal Observer*,

the defects which then prevailed were repeatedly pointed out.

1st, Two and three years elapsed between the decisions and their publication.

2ndly, The reports were unnecessarily long, the pleadings and documents were set forth too fully, and the arguments of counsel were given too much at length.

3rdly, The expense of the reports was far too great.

The first of these objections has been partly removed, but the others remain in almost equal force, and of late years a new class of objections has arisen.

4thly, The number of contemporaneous reports has largely increased, so that the profession is burdened with the trouble of reading several versions of the same case, and the cost is enhanced in proportion.

5thly, Besides the *regular* reports (as they are called) there are numerous law periodicals which contain altogether a vast mass of cases reported, in some instances within a few days of their decision, in others at the distance of a few weeks, and the rest not much earlier, and in some instances later than the regular reports.

We claim credit for calling attention to the grievance as it existed at the commencement of the *Legal Observer*, 18 years ago, and for showing that short and accurate reports might be supplied at an early period. Indeed, very concise notes are all that the profession requires from the weekly periodicals. Elaborate statements and lengthy arguments and judgments are unnecessary for the practitioner: he wants only to know from time to time the *substance* of each important decision. The full details should be reserved for the regular reports.

This plan we shall endeavour in future to carry out as completely as possible, and whilst we shall thus be enabled to place before our readers a much larger amount of useful and early information in this department of the work than we have hitherto afforded, we shall at the same time find more space for original articles and comments on matters of general interest to the profession at large.

NOTES OF CASES IN MICHAELMAS TERM.

CONSTRUCTION OF AGREEMENT.

In an action by a surveyor against one of the managing committee of a railway company, to recover his charge for surveying a proposed line of railway, it appeared, in the first instance, that the plaintiff, on the 23rd Oct. 1845, had addressed a letter to the committee, in which he offered to survey the line at the rate of 50*l.* a mile; but on the following day he was present at a meeting of the committee, when a resolution was passed, and assented to by the plaintiff, in which it was resolved that the proposed terms should be abandoned, and that on the survey being completed, he (the plaintiff) would be perfectly satisfied with leaving his remuneration in the hands of the committee. The committee had subsequently paid him the sum of 800*l.*, which, in their judgment, was a sufficient remuneration for his services. It was contended at the trial, that it was not the amount but the rate of the plaintiff's remuneration which he agreed should be fixed by the committee, but the Court was of opinion that the plaintiff had agreed to allow the committee to value his services, and must abide by the result. A rule was therefore made absolute to enter a nonsuit. *Firmen* v. *De Burgh*, Queen's Bench, 4th Nov.

LIABILITY OF LIBRARY TO POOR-RATES.

Mr. Justice *Patteson* granted a rule on behalf of the overseers of Birmingham, calling upon the justices of that borough to show cause why they should not issue a warrant of distress against certain parties, in order to try whether or not they were liable to pay poor-rates in respect of certain premises described by the name of the Birmingham Library. It was considered by the justices that the library came within the act of parliament by which buildings occupied and used for purposes of science were exempted from the payment of rates. On the other hand it was urged, that this library was entirely supported by the subscriptions of parties who used the room as a news-room, and, in fact, might be considered a club-room, and could not come within the statute. Practice Court, Nov. 10.

SUGGESTION TO DEPRIVE PLAINTIFF OF COSTS.

The affidavit for a rule to deprive the plaintiff of costs, under the County Court Act, (9 & 10 Vict. c. 95, s. 129,) omitted to state affirmatively, that the plaintiff did not dwell more than 20 miles from the defendant, but stated in lieu thereof, that the defendant resided at No. 2, Elizabeth Street, Foxley Fields, Walworth, and that the plaintiff carried on business at a short distance therefrom, namely, at Walworth Common. The Court held, that the affidavit must show affirmatively, that the case does not fall within any of the exceptions contained in the 128th section, which gives concurrent jurisdiction to the Superior Courts in certain cases, one of which is, where the plaintiff resides more than 20 miles from the defendant. This decision being in conformity with that of *Meeking* v. *Nicholls*, 36 L. O. 149, and 17 Law Jour. C. P., 212, and *Butler* v. *Corney*, reported *ante*, p. 74, and 17 Law Jour. N. S. Exch. 265, the Court discharged the rule with costs. *Brooker* v. *Cooper*, Exch. Nov. 21.

CONSTRUCTION OF THE POOR REMOVAL ACT.

At the trial of an appeal to the sessions for the borough of Cambridge, it was proved that at Midsummer, 1846, John Thomas Elsbury came to reside with his wife and three children in the parish of St. Andrew-the-Less, Cambridge, where he remained with his family till the month of March, 1847, when he deserted them; and that an order was then applied for, and made, for the removal of his wife and three children to the parish of St. Ebbes, the place of the husband's settlement. The appellants contended, that the paupers were irremovable, inasmuch as the second proviso to the first section of the 9 & 10 Vict. c. 66, provided, that the wife and family should be removable only in case the husband should be removable. Upon a case to the Queen's Bench from the sessions, the Court decided that the word "removable" meant "removable in law," and that in the present case the husband was not the less removable from the accident that he was absent from the removing parish. The order of removal was therefore confirmed. *Regina* v. *The Inhabitants of St. Ebbes, Oxford*, Queen's Bench, 15th Nov.

APPOINTMENT OF OVERSEERS AT YARMOUTH.

Upon an application questioning the right of the Mayor of Yarmouth to appoint overseers for that borough, the Court of Queen's Bench decided, that the appointment was vested in the mayor by the 8th section of the 43rd of Elizabeth, which by the 10th section imposed a penalty upon him if he neglected to make the appointment. The right was confirmed by the 6th section of the 5 & 6 William 4, c. 76. In the case of *R.* v. *Butler*, 1 W. Blac. 649, which was cited, Lord Mansfield had not pronounced his decision upon the construction of the statute, though he had expressed his opinion as to the inconvenience which would result from such a power being exercised by the mayor. The rule was therefore discharged. *Regina* v. *Preston*, Queen's Bench, Nov. 15.

INJUNCTION AGAINST THE DELIVERY OF A CARGO TO CONSIGNEES.

A ship called the Charlotte sailed to America with a cargo of coals and salt, consigned to the plaintiff, with instructions to return a cargo of cotton. This was done, the difference in value was charged to the consignees at Liverpool, and bills given for the amount. Before the arrival of the ship, the consignees became bankrupt. The question was, whether the plaintiff had a lien on the cotton against the assignees. The *Vice-Chancellor of England* had granted an injunction, restraining the master of the ship from delivering the cargo to the assignees? The *Lord Chancellor* on appeal continued the injunction. *Mealove* v. *Carter and Liverpool Dock Company*, Lord Chancellor's Court, 3rd Nov.

TAXATION OF SOLICITOR'S BILL AFTER PAYMENT.

The Birmingham and Oxford Junction Railway Company agreed to purchase certain pieces of land, and were to pay the costs of the vendor's solicitors, who delivered a bill amounting to 55*l*. Deductions were required, but the solicitors refused to complete the purchase without payment in full. The company in order to avoid delay, paid the charges under protest, and now petitioned for a taxation. The *Master of the Rolls* held, that there had been no undue pressure, and dismissed the petition with costs. Rolls Court, Nov. 3.

VENDOR AND PURCHASER.—NEW ROAD ACCORDING TO MAP.

The particulars of sale of a piece of land, to be sold in lots, described it as adapted for buildings, and that wide and handsome roads would be secured for each lot. A dispute arose on the obligation to make a new road. The vendor said he could not make it without forfeiting a lease of land through which part of the road would pass. Lord *Langdale* said:—Where a vendor in lots of lands for building accompanies his particulars of sale with a map, he holds out expectations that the land shall be divided in the manner shown by the map, and it is not competent for him to divide the land in any other manner. The plaintiff had a right to require that the plan should not be departed from, and was entitled to specific performance of his agreement to purchase. He should refer it to the Master to inquire what damage would be occasioned to the plaintiff in consequence of the road not having been made. *Peacock* v. *Penson*, Rolls Court, 4th Nov.

VERIFICATION OF SHERIFFS' NOTES.—PRACTICE.

In a case tried before the Secondary under a writ of trial, the plaintiff was nonsuited, and a rule was afterwards obtained to show cause why the nonsuit should not be set aside and a new trial had. Upon showing cause against this rule it was objected, that the sheriff's notes, although annexed to the affidavit and signed by the secondary, were not verified. It was suggested that the hearing of the rule might be adjourned until an affidavit of verification was obtained, but the Court refused to allow this to be done, saying that the rule had been improvidently granted, and that the defect was pointed out at the earliest moment. Rule discharged. *Brown* v. *Row*, Exch., 23rd Nov.

RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Major v. *Major.* Nov. 25, 1848.

PAYMENT OF MONEY INTO COURT.—VARIANCE OF ORDER ON AFFIDAVIT OF SERVICE FROM THE NOTICE OF MOTION.—HEARING ORIGINAL MOTION.

An order for payment of money into Court obtained on affidavit of service must not vary from the terms of the notice of motion.

If one part of an appeal motion is dismissed the Lord Chancellor will not entertain another part which is in the nature of an original motion.

Mr. *Hislop Clarke* (in the absence of Mr. *Bethell*) stated that the present motion was an appeal from an order of the Vice-Chancellor of England, under the following circumstances:—The plaintiff had obtained his Honour's order, dated July 20, 1847, for payment of 370*l.* into Court by some of the defendants, on a day therein mentioned. The time for enforcing payment under this order having elapsed, the plaintiff served notice of motion, dated May 23, 1848, "for leave to insert in the order of the Vice-Chancellor of England, dated July 20, 1847, a day for payment by the defendants, as therein directed, of the sum of 370*l.*, thereby ordered to be paid into Court by them." Pursuant to this notice, and in the absence of counsel for the defendants, on affidavit of service, an order, dated August 9, 1848, had been taken on behalf of the plaintiff, for payment of the said sum of 370*l.* into Court by the defendants on or before the 16th day of August then instant. On the first day of the present Term, the Vice-Chancellor of England, by an order dated November 2, 1848, and made on the motion of the defendants, discharged, with costs, the order of August 9, 1848, for irregularity in not following the terms of the notice of motion of May 23, 1848.

The learned counsel now moved, by way of appeal, to discharge his Honour's order of Nov. 2, and for leave to insert in the original Order of July 20, 1847—a day for payment into Court by the defendants of the said sum of 370*l.*, with costs.

Mr. *Stuart* and Mr. *Toulmin* opposed the motion.

The *Lord Chancellor* said, there could be no doubt that the first order (August 9, 1848) of the Vice-Chancellor of England was irregular, in not following the terms of the notice of motion upon which it had been obtained; and that his Honour's second order (Nov. 2) discharging the first, was quite correct. With respect to that part of the present motion which asked for leave to insert a day of payment in the order of July 20, 1847, his lordship thought that it was in the nature of an original motion, and therefore he would not entertain it. The motion of the plaintiffs was accordingly dismissed with costs.[a]

Rolls' Court.

Cocks v. *Purday.* Nov. 1848.

INJUNCTION.—AFFIDAVITS.—COPYRIGHT.

Where a work complained of as being a breach of copyright in a certain publication, was published under an impression that there was no copyright in that publication, and after that question had been decided in the affirmative, the publication was justified on the ground that there was substantially no breach of copyright, the Court restrained the publication of the work, pending an action to try whether there was a breach of copyright or not.

THIS case came on upon a motion after-answer, for dissolving an injunction against the publication of two musical works, called the Elphin Waltzes and the Elphin Song, to the copyright of which it was contended, that the plaintiff had been declared to be entitled by the decision of the Court of Exchequer, in *Cocks* v. *Purday*, reported 12 Jur. 677. So far as regarded the Elphin Waltzes, this right was not disputed; but as to the Elphin Song, the defendant contended, that there was no breach of the plaintiff's copyright. The plaintiff replied, that the breach of copyright in this instance was also clear, and in support of this position had filed several affidavits in opposition to the answer. The statements in the answer as to the authorship of the Elphin Song, were loose and somewhat inconsistent with each other; and it appeared that the song had been published at a time when the claim of the plaintiff to any copyright at all in these compositions was denied by the defendant; and that in January last, before the judgment in *Cocks* v. *Purday* was delivered, the defendant's solicitor had admitted that the two cases must be governed by the same decision.

Mr. *Walpole* and Mr. *Campbell* relied upon these circumstances to sustain the injunction, and contended, that the affidavits were admissible upon the question of the fact of a breach of copyright having been committed by analogy to cases of waste: *Gibbs* v. *Cole*, 3 P. W. 255, reported from the registrar's book, 1 Cox, 163; and *Gibson* v. *Nicol*, 6 Beav. 422, and asked the Court to direct a reference instead of an issue, according to the analogy of *Carnan* v.

[a] The principle upon which the Vice-Chancellor of England discharged the order of Aug. 9, 1848, was acted upon very recently by Vice-Chancellor Wigram, in the case of *Hutton* v. *Hepworth*, 6 Hare, 315.

Bowles, 2 Bro. C. C. 80; *Jeffery* v. *Bowles*, Dick. 429; *Anon.* v. *Leadbetter*, 4 Ves. 481.

Mr. *Turner* and Mr. *Hall*, contrà, contended, that the Court, in granting an injunction, proceeds upon the existence of a legal right, and therefore could not act until that right was ascertained; whereas here it was at least doubtful. *Spottiswoode* v. *Clarke*, 2 Phill. 155; *Jervis* v. *Chapman*, 3 Bea. 133. And to show the inadmissibility of affidavits, referred to *Manser* v. *Jenner*, 2 Hare, 600, and the cases there commented upon.

Lord *Langdale*, after stating the facts of the case, said, that the argument for the defendants admitted the copyright of Mr. Cocks in the Elphin Waltzes, but contended that in the Elphin Song complained of, the music of those waltzes was so dealt with as not to violate the plaintiff's copyright. He thought there must be a trial as to this question; but, considering that the publication of the Elphin Song originally took place at a time when the defendant denied that the plaintiff had a copyright in the Elphin Waltzes, and considering, also, the statement made by the plaintiff's solicitor before that question was decided, he thought he ought to continue the injunction, in the mean time putting the plaintiff on an undertaking to bring his action, and the defendant to admit that he was entitled to the copyright of the Elphin Waltzes.

Queen's Bench.

(Before the Four Judges.)

Suggett v. *Cole.* Michaelmas Term, 1848.

COUNTY COURT.—SUGGESTION ON THE ROLL TO DEPRIVE PLAINTIFF OF COSTS.

On motion to set aside an order made by a judge at chambers, directing a suggestion to be entered on the roll to deprive a plaintiff of costs in an action brought in the Queen's Bench, where the judge who tried it refused to certify that it was a proper action to be brought in such Court:

Held, *that an order directing a suggestion to be entered was sufficient, and that it was not necessary that the order should direct the record to be brought into Court so that the entry might be made.*

Held, *also, that the Court would not interfere to set aside the order on the ground that the affidavit on which the application to the judge at chambers was made failed to show that the defendant lived within the jurisdiction of the County Court.*

An action was tried before Mr. Justice Wightman, in which the plaintiff claimed the sum of 47*l.*, but ultimately recovered a verdict for 4*l.* The learned judge refused to certify that the action was fit to be brought in the Superior Court, and an application was afterwards made to Mr. Justice Patteson at chambers to make an order to enter a suggestion on the roll to deprive the plaintiff of costs. At the time of the application at chambers the plaintiff objected to the affidavit on which the motion was made, and the learned judge allowed the defendant to amend it. The application was afterwards renewed, and Mr. Justice Patteson made an order that a suggestion should be entered. A rule *nisi* was afterwards obtained to set aside such order on the ground, first, that the order was bad on the face of it, because it merely directed a suggestion to be entered on the roll, whereas it should have been to bring in the roll in order that the suggestion might be entered on it, because the record was in the possession of the plaintiff. Secondly, it was contended that the order was bad because the affidavit on which the judge at chambers acted did not show that he had any jurisdiction. The affidavit stated that the defendant lived in Holborn, part of which only is within the jurisdiction of the Bloomsbury County Court, and that, therefore, it did not appear positively that the defendant lived in that part of Holborn which was within the jurisdiction of the County Court.

Mr. *E. P. Price* showed cause. The plaintiff only recovered 4*l.* on the balance of accounts, and therefore, by the 58 sect. of 9 & 10 Vict. c. 95, the plaintiff might have sued the defendant in the Bloomsbury County Court. Sect. 129 enacts, "That if after the passing of this act an action is brought in one of the Superior Courts for which a plaint might have been entered in the County Court, the plaintiff shall have judgment to recover such sum only, and no costs." The order therefore to enter a suggestion on the roll to deprive the plaintiff of costs, was properly made by the learned judge, and is in the ordinary form. It is now too late for the plaintiff to impugn the validity of this order, on the ground that the affidavit on which it was made did not show that the defendant lived within the jurisdiction of the Bloomsbury County Court. The affidavit was once amended, and the present objection might have been then pointed out, but the plaintiff refuses to take the objection, and it is contrary to the practice of the Court to set aside a judge's order on the ground that the materials on which he formed his judgment were defective.

Mr. *Temple*, contrà. The plaintiff having recovered a verdict against the defendant, is entitled to his costs by the statute of Gloucester, and it must be shown affirmatively before this order can be sustained, that he is deprived of them. The Courts have held that before an order of this sort can be made it must appear that the defendant lived within the jurisdiction of the County Court, and the affidavit in this case being defective in that respect, Mr. Justice Patteson had no jurisdiction to make the order. The record is in the possession of the plaintiff, and the order therefore ought to direct it to be brought into Court in order that the entry may be made. [*Wightman*, J. The entry must be made, not on the record, but on the issue roll which is in this Court.]

Lord *Denman*, C. J. I think this rule ought to be discharged. Assuming that it was ne-

cessary to show on the face of the affidavit that the defendant lived within the jurisdiction of the County Court, yet I must now presume, either that such fact was stated, or that it was admitted. The order is good, the bringing in the roll seems to me to be involved in the order.

Mr, Justice *Coleridge*. On the circumstances disclosed in this case, I do not see any reason to set aside the order made by my brother Patteson. An objection to the affidavit was made at chambers, and it was allowed to be amended; the application was afterwards renewed and the order made, which we are now asked to set aside, because a defect existed in the affidavit which might then have been pointed out. If we made this rule absolute, I think we should be introducing a very mischievous practice.

Mr. Justice *Wightman* concurred.

Mr. Justice *Erle*. This is an application to rescind an order made by a Court of competent jurisdiction. This Court reserves to itself power to review such orders, and will interfere when they are defective on substantial grounds, but then it must be shown that there is a substantial objection. On the facts of this case I am of opinion, that the objection is one of form and not a substantial one.

Rule discharged.

Queen's Bench Practice Court.

Wilkinson v. *Willats*. Nov. 15, 1848.

ENLARGING PEREMPTORY UNDERTAKING.

An affidavit upon which a rule was obtained to enlarge a peremptory undertaking, stated as the ground for not going to trial, the absence of a material witness, but did not state the name of such witness: Held, *not to be a ground for discharging the rule.*

Charnock, on a former day, obtained a rule to enlarge a peremptory undertaking. The affidavit upon which he moved stated that, immediately after the first day of May last, (the date of the rule made in this cause,) he, (the deponent,) followed up the information which he was in possession of regarding the residence of the material witness on account of whose absence he could not proceed to trial at the time when the said rule was made, and that he was unable to obtain the address of such witness, or discover where he was to be found, although he used every exertion to do so until after the time when it was too late to give notice of trial in this cause for the commission day for Abingdon, where the said assizes were appointed to be held," &c.

Hodgson now showed cause, and argued that as this was a second default, the affidavit was not sufficient in not stating who the witness was, or what was the general nature of his evidence. (*Mountford* v. *Bond*, 2 Dowl. 403.) That at least his name should have been given, that the Court might be satisfied that such a person really existed.

Patteson, J. It really comes to this, whether or not upon a second default it is necessary to give the name of the witness. I do not see why the name should be required more upon the second than the first default. In the absence of any express authority upon the subject, I think I ought to let the plaintiff try his action.

Rule absolute, upon payment of costs.

Common Pleas.

Boden v. *Eyton*. Michaelmas Term, 1848.

ACTION FOR EXCESSIVE DISTRESS.—SEIZURE AND SEVERANCE OF ONE ENTIRE THING.

It is no excessive distress where a party entitled to distrain for 39l., arrears of rent-charge, seizes and sells the grain of an entire rick of corn, the largest of three, valued at 62l., upon the terms that the straw, valued at 20l., should, in accordance with the plaintiff's agreement with his landlord, be left to be consumed upon the premises. He is not bound to divide the rick and sell only a portion of both the straw and grain.

THIS case was tried before Mr. Baron Platt, at the last Salop Assizes, when a verdict was found for the defendant. There were several counts in the declaration, but the only one on which any point turned was the second, for an excessive distress. The pleas were, not guilty; secondly, that the goods were not the goods of the plaintiff; and thirdly, a justification under the Tithe Act. The material evidence at the trial was, that the plaintiff being a tenant of a farm, quitted it on Lady day, 1847, leaving at the time three ricks of wheat on the premises. Between the plaintiff and his landlord there was an agreement to the effect that the plaintiff, on quitting the farm, should leave the straw upon the premises to be consumed there. On the 6th of September, 1848, a distress was levied by the defendant on the largest of the three ricks of wheat, for 39*l.* arrears of tithe rent-charge, and after having appraised it, the defendant sold the grain in the rick upon the terms that the straw should be left upon the premises, in accordance with the agreement between the plaintiff and his landlord, which was at the time brought to his notice by the landlord's agent. The value of the straw was 20*l.*, and the grain 42*l.*

Whateley, on behalf of the plaintiff, moved, pursuant to leave reserved at the trial, for a rule *nisi* to enter a verdict on the 2nd count, with nominal damages. The defendant was bound to sell both the straw and the grain, by which means a portion only of the rick would have been sufficient to sell; or he might have distrained on one of the two smaller ricks proved to have been upon the premises. At the trial it was contended, on behalf of the defendant, that, as to the tithe owner, he might act as he had done, in accordance with the terms of the agreement between the plaintiff

and his landlord, and for that the case of *Abbot* v. *Petch*, 8 M. & W. 419, was cited. But it was submitted that he ought, notwithstanding the agreement, to have severed the rick, and sold a sufficient portion of both the straw and the grain. *Frusher* v. *Lee*, 10 M. & W. 709.

Wilde, C. J. I think the evidence in the case did not support the count. The statute of Marlbridge, 52 Hen. 3, c. 4, has reference to cases of distress where there has been a flagrant abuse; and in Co. Lit., whilst treating of excessive distress, the cases put are those of flagrant abuse. All that a landlord, and here the defendant, as tithe owner, had to do in distraining, was to exercise a reasonable and honest discretion. He was authorized to seize as much as a reasonable man would think was adequate, and not excessive, having regard to the amount due. If there are several articles upon the premises, some of which greatly exceed the amount due, and others of a value more proportionate and suitable, an action might lie for seizing the articles of large value and leaving the others, as if there were several houses, and the amount being small, one house of small value would suffice, and the landlord seized a house of large value. Here the defendant did not know the value of the other two ricks, and I think he had a right to seize the whole of the rick that he did, being one entire thing, and then sell a portion of that one entire thing, leaving that portion which was subject to question. Looking in the present case to the nature and value of the thing seized, and the amount due, there was no ground for saying that the distress was excessive in point of law. Had it been a case of real damage it would have gone to the jury.

The rest of the Court concurred.

Rule refused.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

Master of the Rolls.

After Michaelmas Term, 1848.

AT THE ROLLS.

Saturday	Dec. 2	Motions.
Monday	4	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Tuesday	5	
Wednesday	6	
Thursday	7	
Friday	8	
Saturday	9	Motions.

AT THE JUDICIAL COMMITTEE.

Monday	Dec. 11	
Tuesday	12	
Wednesday	13	
Thursday	14	
Friday	15	

AT THE ROLLS.

Saturday	Dec. 16	Motions.

AT THE JUDICIAL COMMITTEE.

Monday	Dec. 18	
Tuesday	19	
Wednesday	20	

AT THE ROLLS.

Thursday	Dec. 21	Motions.
Friday	22	Petitions in General Paper.

Short Causes, Consent Causes, and Consent Petitions, every Saturday at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

COMMON LAW SITTINGS.

Queen's Bench.

THIS Court will proceed with the business in the following order:—

On Monday and Tuesday, the 4th and 5th days of December, six selected cases from the Crown Paper and then return to the Special Paper.

The Court will take any New Trials pending, which parties may agree to or find convenient.

Common Pleas.

This Court will, on Monday the 4th December, hold Sittings, and will proceed in disposing of the business now pending in the *Paper* of *New Trials*, and in the *Special Paper* on the same day, and on the 5th, 6th, 7th, and 8th days of the same month, and will also proceed to give judgment in certain of the matters that will be then standing over for the consideration of the Court.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER TRINITY TERM, 1848.

Common Pleas.

London.

J. J. Blake	Soady	S. J. Mangles	Prom. Young
Vallance and B.	Groom and others	S. J. Hutton	Trov. Linklaters
Oliverson and Co.	Hamilton	S. J. Cochran	Ca. Hill and Heald
Druce and Sons	Klockmann	S. J. Hutchinson	Prom. Bell and Co.
Sutton and Co.	Stubbs and others, assignees.	Fuller	Prom. W. Murray

Cotterill	Gosin and others	S. J.	Moore	Prom. Tilson and Co.
Same	Same	S. J.	Shadbolt	Prom. Same
Same	Warren and another	S. J.	Peabody	Prom. Oliverson and Co.
Same	Hambro and another	S. J.	Gurney (chairman, &c.)	Prom. Pearce Co.
Stafford	Cox	S. J.	James, Esq.	Prom. James
T. Parker	De Camera	S. J.	Little	Ca. Oliverson and Co.
Serrell	Serrell	S. J.	Derbyshire, Staffordshire, and Worcestershire Railway	Prom. Lambert
Oliverson and Co.	Smyth and others	S. J.	Anderson	Prom. Lawfords
Minet and Smith	Ewbank	S. J.	Nutting and another	Ca. Desborough Y. & Co., Bridger and Blake
Crosby and Crompton	Barnes	S. J.	Troup	Dt. Combe
J. Jenkyn	Dean	S. J.	Sir J. M'Taggart, Bart.	Prom. Pain
Rhodes, Lane, and R.	Brown and others, assignees, &c.	S. J.	Kempton	Prom. Wire and Child
Jones, Trinder, and Co.	Wilson, P. O.	S. J.	Thompson and others	Prom. { Oliverson & Co. / Tatham and Co.
Pocock and P.	Jenkinson & another	S. J.	Musgrove and another	Ca. Kilgour and P.
Oliverson and Co.	Gantois and another	S. J.	Martin	Tro. Stevens and S.
Same	Grant and others	S. J.	Norway and others	Ca. Fyson and Co.
O. Gray	Gray	S. J.	Hanson and others	Prom. Oliverson and Co.
Reed, Langford, & Co.	Cannan and others, assignees	S. J.	Peabody	Prom. Same
Oliverson and Co.	Kincaid and others	S. J.	Willis, Sec., &c.	Ca. Peile and Son.
Gordon and Son	Hillcoat	S. J.	Archbishop of Canterbury and Archbishop of York	Ca. Johnson, Son, and W.
Rhodes, Lane, and R.	Brown and others, assignees	S. J.	Norris	Prom. Keddell and Co.
H. J. Barber	Flight	S. J.	Tarleton, clk.	Dt. Williams and M'Leod
S. Walters	Clark	S. J.	Parker and another	Ca. Slee and Robinson
Spike	Peppercorn	S. J.	Lubbock, Bart.	Ca. Oliverson and Co.
Palmer, France, and P.	J. Johnson	S. J.	H. Marriott	Prom. Baylis and D. Lewis and Lewis
Jenkinson and Co.	Wyatt		Rhodes and anr., sued, &c.	
Ivimey	Cornforth		Chauncy and another	Dt. Western and Sons
Same	Spurrier and another		Same	Dt. Same
A. A. Walter	Spencer		Marns	Dt. F. J. Manning
Warneford	Collins (a pauper)		Anthony	Ca. Norris, Allen, and Co.
Becke	Becke		Carter	Cov. Rickards and W.
R. Cheere	R. Von Glehn		G. Gull	Dt. Marten and Co.
Silvester	Cordingly		Morgan	Prom. Burbidge Hoppe and Boyle
Thrupp	Macqueen and anr.	S. J.	Bulmer and another	Prom. W. B. James
Finch and Shepherd	Crane	S. J.	James	Prom. { C. and J. Allen / Lofty, Potter, and / P. Richardson[Son
J. H. and R. Tyas	Dane		Briggs and others	
J. J. Blake	Stansfield and others, assignees	S. J.	Gladstane	Tro. Woolley
Same	Same	S. J.	Staff	Tro. Holt and Aubin
Baxter, Rose, and N.	Winn		Nicholson	Dt. Lammin
Coe	Fish	S. J.	Kempson	Dt. & Dtue. Wire & Child
T. Lott	Rosser and another, executrix and executor		Rosser, executrix, &c.	W. A. Boyle
Cotterill	Hancock and another	S. J.	The York, Newcastle, and Berwick Railway Co.	Ca. Williamson and Hill
W. B. James	Waller and others		Higgins	Ca. Hooker
Collins and R.	Collins and another		Groom & ors. assigns. &c.	Issue, Brown
A Dobie	Adams	S. J.	Peters	Prom. Hughes and Co.
W. R. Buchanan	Gillingham		Stuart	Issue, Venning and Co.
Jones, Trinder, and Co.	Doe d. Gardner		Serle	Ejt. A. J. Browne
F. J. Manning	Marns	S. J.	Desborough, Sec., &c.	Prom. Browning
Emslie and P.	Connop and anr., exors.		Daniel	Prom. Tyrrell
G. and C. Kempson	Kempson and another		Wride	Dt. W. Driver
Randall and V.	Lindsey		Barron and another	Dt. S. Fisher
Sutton, Ewens, and Co.	Freeman and another		Gibbins	Dt. J. D. Taylor
L. Jacobs	Early and another		Clay and another	Prom. { Bayley & Jansen / Sewell & Fox
Biggenden	Cakebread (a pauper)		Branen	Prom. Buchanan
Oliverson and Co.	Christie, jun.	S. J.	Trott and others	Ca. Hughes, K. and M.
Armstrong and W.	Archibald		Willson	Tres. Bracey
Ashurst and Son	Burton and another	S. J.	Wilson and others	Prom. G. Clark
W. W. and R. Wren	Callander	S. J.	Gibson and another	Prom. Robert Ellis
Harris	Tripe		Croft	Pro. Cooper

Exchequer of Pleas.

Tatham and Co.	Hill	S. J.	Taff Vale Railway Co.	Covt.	Hunts
Same	M'Swiney	S. J.	Birkett	Pro.	Bartrum
Cotterill	Cruikshank & others	S. J.	Powles	Pro.	Tatham and Co.
Dodd and Co.	Castigne	S. J.	Carter	Pro.	Galsworthy
Oliverson and Co.	Thompson & another	S. J.	Bailey and others	Pro.	Chester
T. Tyrrell	Gurney	S. J.	Lord Ingestre		T. W. Younghusband
C. and H. Hyde	Gillard, admix., &c.	S. J.	Lanc. and Yorksre. Railway Company	Ca.	Johnson and Co.
Donne and T.	Haynes and others	S. J.	Brown	Ca.	Hume and B.
Baxter and Co.	Great Northern Railway Company	S. J.	Webster	Dt.	W. M. Webster
Wilkinson and G.	Cooper, Esq., P. O.	S. J.	A. Rickman	Pro.	Watson
Cragg and J.	Page	S. J.	Cameron's Calbrk. and Steam Col. Swansea and Loughor Railway Co.	Dt.	Elderton
Oliverson and Co.	Scottish Union Insurance Company	S. J.	Grut	Covt.	Dawes and Son
J. Bowen May	Roberts	S. J.	Fleming	Ca.	Gardom
Sole and T.	Spence and others	S. J.	Maudslay	Pro.	Sharpe
R. and W. G. Roy	Bosanquet, P. O.	S. J.	Bullock	Sci. Fa.	Crosley and Co.
Same	Same	S. J.	Shortridge	Sci. Fa.	Johnson and W.
Phillips and Son	Wakley	S. J.	Healey and another	Ca.	Cattlin
J. Moon	Wills	S. J.	Bland and another	Ca.	Fry
Fearnley	Hodge		Pontifex	Pro.	Pontifex and Co.
Capes and S.	Black		Humphry	Pro.	Pilcher
M'Leod and S.	Johnson	S. J.	Crofts	Pro.	Bell
J. P. Peddell	Brooker and another		Johns and another	Pro.	C. Frost
Rack	Boulcott and another		Challis and another	Ca.	Burchell and Co.
Crosby and C.	Harrison		Marah	Pro.	C. Browne
Phillipps and Son	Violett and others	S. J.	Peet	Pro.	Hornby and T.
Maples and Co.	Gardner and another	S. J.	Nutting	Pro.	Ellis
Brady and Son	Foale		Cahn	Dt.	Adams [and Son
Oliverson and Co.	Dennistoun and ors.	S. J.	Young and others	Dt.	and Detinue, Druce
Tatham and Co.	Mowatt	S. J.	Collett	Pro.	Gordon and Son
S. Neal	Peacock	S. J.	Mackenzie	Pro.	Stevens and G.
Stevens and S.	Wilkinson and anr.	S. J.	Hele and another	Pro.	Blower and Co.
Goddard and E.	Grapes	S. J.	Burney	Ca.	Gregory and Co.
Norton and Son	Pennell and others	S. J.	Page and another	Dt.	Plucknett and Co. and
Tatham and Co.	Vanzeller		Crossley	Pro.	Clark [Parker
Bolding and P.	Forbes		Hamilton	Dt.	Cotterill
Same	Gandy		Hargrave and another	Dt.	Finch and S.
Dawes and Sons	Nunn and others	S. J.	Turpen	Pro.	Wire & Co.
Miller and C.	Gill	S. J.	Hill	Pro.	G. and C. Smith
Teague	Birchall and another, assignees, &c.	S. J.	Noad	Dt.	Vallance
Donne and T.	Taylor		Purdy	Pro.	Philp
Wm. Ley	James P. Ley	S. J.	F. P. Barlow	Pro.	Edwards and R.
Same	Arthur Ley	S. J.	Same	Pro.	Same
Symes and Co.	Doe dem. Pedley	S. J.	Ferguson	Ejt.	Davies and Co.
Fry and Co.	Patent Galvanised Iron Company	S. J.	Santamaria	Pro.	Crowder and M.
R. Meggy	W. Meggy		Swallow	Dt.	Child and K.
Same	Same		Ward	Dt.	Same
Simpson and Co.	Davies		King	Dt.	Haines
Goddard and E.	Brown		Tempest	Pro.	Van Sandau and Co.
Teague	Renter and others, assignees, &c.	S. J.	Evans and another		T. Parker
Bedford	Goldingham	S. J.	Ward, Esq.	Pro.	Elmslie and P.
Wadeson and M.	Langlois, jun.	S. J.	Reid, Bart., and others	Trov.	Crowder and M.
H. Lloyd	Nevill and others, assignees, &c.		Sherrard	Feigned Issue, Moon	
Teague	Birchall and others, assignees, &c.	S. J.	Noad	Ca.	Vallance
F. W. Denny	Wallbutton and another		Lenthall	Pro.	In person
W. H. Garry	Kirby		Williamson	Dt.	J. Lewis
Hill and Heald	Wallnutt and others	S. J.	Albers	Trov.	Oliverson and Co.
Rhodes and Lane	Lafone and another	S. J.	Ellis	Pro.	C. W. Walton
P. A. Hanrott	Cory	S. J.	Norfolk Railway Company	Dt.	Parker and Co.
Miller and Horn	Royal Thames Steam Navigation Company	S. J.	Bruce	Dt.	Bickley
Teague	Offer and another		Birmingham Plate and Crown Glass Company	Dt.	Crosby and C.
Walter Justice	Beegin		Sherman	Pro.	Wilde and Co.
Hornby and Twogood	Towgood and others		Buckley	Pro.	Beevor and B.

Vincent and P.	Medlicott		Hunter	Pro. Donne and Taylor
Bodman	Long		Homan	Pro. Crocker
Dean and Co.	Elliott		Dailey	Dt. J. A. Jones
Callow	Richardson		Barnes	Pro. Sutcliffe
J. B. May	Brine	S. J.	Bamalgette	Ca. Grimaldi and Co.
W. Murray	Fox and others		Rigby and another	Dt. Nelson and Co.
Gale	Taylor		Fundell	Dt. Bennett
Morris and Co.	Browning	S. J.	Curling	Dt. In person
Tatham and Co.	Moore		Metropolitan Sewage and Manure Company	Dt. Bailey, S. and S.
Same	Same		Same	Pro. Same
T. Tyrrell	Londonderry and Enniskillen Railway Co.		Goodwin	Dt. Randall
Tilson and Co.	Nicholson		Rayne	Pro. Meggison and Co.
Same	Fraser (P. O.)		Richardson	Pro. Shield and Co.
In person	Cobbett (pauper)	S. J.	Sir G. Grey and another	Tres. Derby and R.
W. Lewis	Slater		Bramwell	Pro. J. Paterson
C. Gardiner	Herapath		Hamerton	Dt. Cragg and J.
J. Appleton	Castrique		Hill	Pro. Austin
H. J. Fitzpatrick	Sparke (pauper)		Hunt	Dt. H. G. Robinson
Colley	Palmer	S. J.	De Dopff	Dt. Shearman and S.
Same	Webb		Harries	Dt. Holme and Co.
Rains	M'Kay		Ellis	Ca. Fry and Co.
Goddard and E.	Pontifex and others		Heile	Pro. Bickley
Pearce and Co.	Vallée	S. J.	Dumargue	Pro. Comyn
B. Price	Eads		Burton	Pro. Surr and G.
Ashfield and C.	Durham and others, trading, &c.		Driver and another	Pro. S. N. Driver
Ashurst and Son	Pare	S. J.	Atwood	Pro. Rixon and Son
Emmet and R.	Courtenay		Courtenay	Dt. Prichard and C.
J. H. Clayton	Morris and another		Swayne and another	Pro. Van Sandau and Co.
Nicholson and P.	Stiffel and another		Kirkham	Pro. J. P. Peddell
J. C. and H. Freshfield	Rennie, knt., and anr.	S. J.	Wynne, knt.	Pro. S. Moores
T. Walker	Stockton and Darlington Railway Co.	S. J.	Fox, Esq.	Pro. G. S. Ford
Morris and Co.	Hubbuck		Godfrey	Dt. Lewis
Teague	Slater		Slater, executor, &c.	Dt. Hunt and L.
Tatham and Co.	Turnbull	S. J.	Reid, Bart., and others	Cov. Crowder and M.
Scott and T.	Hodgson	S. J.	Black	Pro. Sidney and S.
Husband and W.	Rabey, jun.		Trenery	Case, Finney
Norton and Son	Dawson	S. J.	Wrench and others	Pro. Tatham and Co.—Lane and P.
W. Taylor	Jones and another		Clements	Pro. Messrs. Hyde
C. J. Holmes	Joseph		Noble	Pro. Pollock
Shuttleworth	Tyerman		Burrell	Pro. Finch and Co.
Hall and D.	Hart		Conquest	Tres. Phillips and V.
Norris and Co.	Barton		Coode	Pro. Hill and M.
Shield and H.	Drew and others		Trego	Dt. Dimmock and B.
Malton	Burton	S. J.	Morrison	Pro. Bevan and G.
R. and W. G. Roy	Burmester, (P. O.)		Cropton, sen.	Sci. Fa. Meggison and Co.
Same	Same		Cropton, jun.	Sci. Fa. Same
E. Towsey	Ronconi	S. J.	Delafield	Pro. Appleby
Tilson and Co.	Atkinson		Ellerton	Pro. J. H. Dixon
Same	Bussey		Same	Pro. Same
Same	Bussey, executor		Same	Pro. Same
Chatfield and Co	Cargill		Cockerell and others	Pro. Oliverson
Devonshire and W.	Toulmin		Curling	Pro. In person
Shield and Co.	Gull		Lindsay and another	Pro. Weymouth and G.
Hopwood and Son	Addington		Stephenson	Dt. Scott and T.
Tilson and Co.	Melladew and others		Blake and others	Pro. Symes and Co.
C. Browne	Peveira		De Camara	Dt. W. Dawes
Phillips and Son	Pegler and another	S. J.	Hislop	Pro. Todd
Clarke and Co.	Norman	S. J.	Lawson, extrix.	Dt. Clayton and Co.
G. Bickley	Silver		Bending	Pro. Ker
C. R. Randall	Hulbert		Jones	Dt. Denton
Gellatly	Hince and another		Ceeley	Pro. Joy
White	Hope		Turner and another	Dt. Knight
De Medina	Field, (pauper)		Osborne	Ca. Hyde and Co.
C. S. Hill	Robertson and another		Wylamis Steam Fuel Co.	Pro. Purrier and W.
Same	Mayer		Breynton	Pro. E. Smith
Stevens and S.	Dowsett		Beet	Dt. Robson
J. Billing	Burton and another		Minchin, sued, &c.	Dt. W. Paine
Ashurst and Son	Pare	S. J.	Attwood, John	Pro. Elmslie and P.
Same	Same	S. J.	Spooner, Esq.	Pro. Maples and Co.
Braham	Jones		Busby	Dt. Lilley

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 9, 1848.

> ——"Quod magis ad nos
> Pertinet, et nescire malum est, agitamus."
>
> HORAT.

AMENDMENT OF THE BANKRUPT LAW.

In submitting to our readers, last week, the Report of the Select Committee of the House of Lords, in reference to the bill to consolidate and amend the Bankrupt Law, we adverted generally to the evidence given before the Committee, as it appears in the printed Minutes.

As most of our readers are aware, the Lord Brougham and Vaux presided over the Committee as Chairman, and seems never to have been absent during its sitting. Two, at least, of the London Commissioners of the Court of Bankruptcy were also constantly present, and the Metropolitan Committee of Merchants and Traders were represented by their Chairman and two or three other active members of the Committee, as well as by Mr. John Curtis, their solicitor. The only peer, besides the noble and learned Chairman, who appears to have taken any interest in the proceedings of the Committee, was Lord Wharncliffe. Two or three other peers occasionally dropped in, but no one of them could be said to have given any regular attendance. As may be supposed, under such circumstances, the noble Chairman had not only the conduct of the inquiry, but he was the Alpha and Omega, and had it very much his own way. Of the 2,584 questions which are recorded as having been put to the witnesses, we are sure we should be within the mark if we stated that 2,000, at least, were put by Lord Brougham.

The evidence, as it may be expected, exhibits all the peculiarities of his lordship's remarkable mind: it is discursive, amusing, often sarcastic, and refers to a variety of topics, not apparently connected with the subject of investigation. When the witnesses could not be led they were driven, and by dexterous management are generally found—sometimes without being conscious of it—to fall into the learned examiner's views of the question. As a specimen of the mode by which a clever examiner can bring out his own view of the facts of a case from a witness utterly unacquainted with those facts, we select, pretty much at random, a portion of the examination of Mr. Commissioner Fane, touching the arrest of a Monsieur Ouvrard, who was arrested under a judge's order, issued under the stat. 1 & 2 Vict. c. 110, and whose case it may be remembered, was brought before the House of Lords by Lord Brougham shortly after it occurred, as it then appeared, to many persons, very much for the purpose of having a *fling* at Sir Frederick Pollock, the judge who made the order. This case, evidently a favourite, and which, by the way, appears to have as little connection with the Bankrupt Law as the flight of Pope Pius from Rome, or the assassination of the Recorder of Norwich, is dished up in two or three shapes in the evidence now before us. The crust is broken, however, in the examination of Mr. Fane, who was probably never nearer the judges' chambers, whence orders are issued to arrest debtors, than the corner of Chancery Lane, and who knew as much of Monsieur Ouvrard's case as any one who reads the debates of the House of Lords, as reported in the daily newspapers may be supposed to do, but no more. We give this portion of the evidence without curtailment, as it is an instructive example to young practitioners, how an experienced examiner, not under control, can,

in an interrogative form, state a body of facts in his own fashion, with or without the concurrence of the witness:—

"*Q.* You are aware that the late acts have only left the power of arrest in one very restricted case, namely, where a person has it in contemplation to quit the country?

"*A.* I am.

"*Q.* Are you not also aware, that even the very limited extent to which the power of arrest is now allowed to exist, has given rise to some cases of the utmost grievance and hardship?

"*A.* I am aware of it; and I consider that those cases are cases of gross abuse, and I attribute the gross abuse in those cases to the very absence of that precaution which I myself have suggested as the proper precaution to be taken, namely, the precaution of having the case inquired into before arrest, by an impartial tribunal like that of a Commissioner in Bankruptcy, accustomed to and familiar with those very inquiries.

"*Q.* Do not you consider that a very respectable tribunal is, the Lord Chief Baron?

"*A.* It is not a tribunal so familiar with inquiries of this kind as the Court of the Commissioners, because the Court of the Commissioners has, from time immemorial, been in the daily habit of investigating petitioning creditors' debts, and in investigating those debts they call for books and papers. They are not satisfied with simple affidavits. In the case to which your lordship alludes, the judge of the Court of Exchequer was satisfied with the affidavit.

"*Q.* Are not you aware that the point before him has nothing to do with a petitioning creditor's debt. It has only to do with the fact *exire regnum*—is he on the point of going abroad or not?

"*A.* My complaint is, that there is no other fact before him under the law as it at present exists, than that, I wish the law to require a stringent inquiry;—such an inquiry as Lord Loughborough's Order in Bankruptcy (26th Nov. 1798; Eden's Bankruptcy Laws, 2nd ed. 243,) directs to be made by the Commissioners in Bankruptcy before they decide upon the correctness of a petitioning creditor's debt.

"*Q.* You are no doubt aware of the case to which the question alludes, namely, the case of a gentleman who was at one time worth 5,000,000*l.* sterling, but who had the misfortune to employ a surveyor who laid his damages at a large sum upon a *quantum meruit*, the learned judge considered it a case of unliquidated damages, and considered the damages in the affidavit upon the *quantum meruit* as a debt?

"*A.* I am aware of that, and if the plan which I have suggested had been adopted Monsieur Ouvrard never could have been arrested, because it is a part of my plan, that no arrest should take place except on a clear case. If there is a doubt—a doubt fit for the consideration of a jury—I would not have an arrest permitted. The moment the case of Monsieur Ouvrard had been stated to a commissioner, acting under my proposed plan, that commissioner would have said to the plaintiff, 'This is not a clear case. This is a case as to which, if you have a demand, you must submit it to a jury, and the jury must judge of the value of your services. This is only your own estimate of the value of your own services.' I think the commissioner would have acted very wrong if he had ordered the arrest.

"*Q.* Or there having been an arrest had held him to bail?

"*A.* Certainly.

"*Q.* Do you suppose that it being clear that the party owed something, the commissioners should have discharged him and allowed him to go abroad; thereby depriving the creditor of the whole value of his services?

"*A.* Yes. I think early arrest ought to be restricted to very clear cases.

"*Q.* Are you aware that the consequence was, that Monsieur Ouvrard being arrested, and having answered the affidavit, after two days' delay, the learned judge allowed a new affidavit from the creditor in reply to be put in?

"*A.* I am. I do not approve of the proceedings.

"*Q.* Are you aware, that in consequence of that, Monsieur Ouvrard was kept, for seven days in a lock-up-house in Chancery Lane?

"*A.* I have heard so.

"*Q.* Are you aware, that he died two months afterwards, very much in consequence of that detention?

"*A.* I have heard that he died.

"*Q.* On what ground was he afterwards discharged?

"*A.* I really do not know.

"*Q.* Was not he discharged in consequence of an affidavit made by him in rejoinder answering the affidavit in reply?

"*A.* I really do not know."

The examination of witnesses who had no peculiar knowledge of the subject under investigation is not more remarkable, however, than the absence of inquiry from witnesses who might reasonably and necessarily have been supposed to have considered and been well-acquainted with topics which appear to have a prominence given to them in this inquiry, more or less proportioned to their importance.

Under one of Lord Brougham's recent acts, (the 7 & 8 Vict. c. 96,) a trader who is in difficulties is enabled, without the intervention or assent of any creditor, to make himself a bankrupt. This arrangement, not having been provided for by the law as it previously existed, or accompanied by other changes which would have rendered it innoxious, has produced many inconveniences and much dissatisfaction. Amongst other things, it is complained, that the bankrupt trader, being himself the promoter and actor, of necessity appoints his own so-

licitor, and that the solicitor so appointed has the issuing and management of the fiat, until the time fixed for the appointment of assignees, when the creditors, if they think fit, may interfere and transfer the working of the fiat to the solicitor of their own appointment.

It frequently happens, however, that the trader who has become bankrupt on his own petition has no assets, and that no creditor will, under such circumstances, undertake the responsibility of becoming assignee, and, in that event, the solicitor appointed to sue out the fiat continues solicitor throughout the whole proceeding. No doubt this is an anomalous and objectionable state of things. The remedy proposed for it by the City Committee, however, is far more objectionable than the evil complained of. These gentlemen suggest that, "in bankruptcies constituted by the debtor himself it would operate as a check upon fraud were the Court to have authority to nominate the solicitor, instead of his being chosen by the bankrupt," and they add, that "clauses to this effect have been drawn by the Committee."

Now if there is any question upon which it may be supposed professional men must be well-acquainted, as well as have a clear interest, it is that involved in the proposition put forward by the City Society. It does not seem that Lord Brougham, however, deemed it desirable to have the opinion of any professional man upon the subject. Mr. Hawes, the Chairman of the City Committee, who has been extensively engaged in business as a soap-maker, and latterly as a brewer, is indeed interrogated upon this subject as follows :—

"Q. Do you consider that in the case of a voluntary fiat it would be an advantageous course to require the Court to nominate a solicitor?

"*A.* That appears to be the only means by which the difficulty attending voluntary fiats can be overcome, so as to check the practice, which is now too common, of a man with nothing coming into Court, appointing his own solicitor, and taking his own time to submit."

Although it was deemed expedient to obtain Mr. Hawes' opinion on this subject, it never seems to have struck Lord Brougham, that Mr. Freshfield, Mr. Maynard, Mr. Lawrance, or any one of the eminent and experienced solicitors examined before the Committee, could have thrown any light upon the question. It happened, however, that two of the professional witnesses, without any direct inquiry on the subject, volunteered to state their objections to this proposal, which, if adopted, we doubt not would in course of time convert the Bankruptcy Court into a snug family party, like some other Courts that could be mentioned. Mr. Joshua Mayhew, in the course of his examination, alludes to the subject in these terms :—

"There is one other point which is alluded to in the petition, on which I wish to make an observation. As the law now stands, if the creditors do not choose to make a man a bankrupt, thinking they will get nothing by it, in such a case of reluctance, the trader may sue out a voluntary fiat. When a person so becomes a bankrupt, he employs generally his own solicitor, and in doing so, it is pretty well arranged how things are to be disposed of before the matter goes to the commissioner. The man is his own petitioning creditor, his own evidence, and everything else, consequently he deals with the thing just as he pleases, and whether there is a farthing in the pound, or whether there is nothing, it is indifferent to him, he only asks for the certificate. It is suggested here whether the commissioner should not nominate the solicitor; I would say, the commissioner should not have that discretion, but that no fiat should be opened against a man who makes himself a bankrupt, except by the solicitor of some of his creditors, which would show that the person was not dealing in a fraudulent manner, which must be the case where he comes to make himself a bankrupt without any estate."

Mr. Frederic John Reed, also volunteered his testimony, as to the inexpediency of vesting the appointment of the solicitor in the Commissioner before whom he is to practise. Mr. Reed's evidence on this point is as follows :—

"It has been proposed, that in fiats (or petitions as it would be under the new bill) issued by the debtor himself, the commissioner should have authority to nominate the solicitor until the choice of assignees. Now, I object to that decidedly, I think it would be giving the commissioner the same power which I object to creditors having, in regard to naming the official assignees; it would be giving the commissioner patronage, and it would enable particular solicitors (I may perhaps be one of the number,) to obtain business which they would not obtain otherwise. In cases where a debtor has issued a fiat against himself, and I have been concerned for the creditors, I have applied, I believe I may say to every commissioner in the Court, in different cases, before the choice of assignees,—I have stated to them that I have been acting for the creditors,—I have shown that my employment has been *bonâ fide*, and the official assignee has been directed to put himself in communication with me, and I have had all the information I wanted, and the estate has been conducted just as if a creditor had been the party apply-

ing for a fiat, instead of the debtor, so that in reality the evil complained of does not exist."

The profession are indebted to Messrs. Mayhew and Reed for taking the trouble to state the decided objection which we doubt not the whole profession would feel to the proposed arrangement. We can scarcely conceive any proposal better calculated to impair the efficiency of the Commissioner, and to destroy the independence of the solicitor. Honour and respect where honour and respect are due, but the professional man should never be accustomed to look for emolument or patronage to any source but the public, with whose true interests his own are indissolubly connected.

THE PROVINCE OF THE BAR.

We have received a letter from the writer of the article in the *Law Review* "on the Province of the Bar," in answer to our remarks on the right of attorneys to plead in the Bankruptcy Court, made in the last number, page 83. We regret that we cannot insert the communication immediately, but it arrived after our arrangements for the present week had been completed. The letter is of considerable length, and comprises a discussion of the general question of the advocacy of attorneys, and the particular one relating to the Bankruptcy Court. We must accompany it with some remarks on both topics.

With the learned gentleman's permission, we should prefer first taking the latter part of his letter, in which we differ in opinion from him, on the law as it *now exists*. This is a subject of great practical importance, and we thought the reviewer had dealt too lightly with it: coolly stating that the attorneys' right to appear and plead in any bankruptcy proceedings, *without employing counsel*, had been repealed, and referring only to the schedule of the act, (6 & 7 Vict. c. 73,) without noticing the new enactment in its stead, contained in the 27th section.

The learned gentleman now reiterates his opinion, with his reasons, and we shall willingly find room for his paper, and afterwards enter upon the general question of what the law *ought to be*,—we presume, for the benefit of the public.

It can hardly be expected, in these times of "cheap law," that the creditors of a bankrupt will be denied the right of employing a solicitor to support their claim, or oppose a fraudulent trader at a small expence, and compelled on all occasions to employ both counsel and solicitor at thrice the cost. Let it be recollected, also, that wherever the magnitude or difficulty of a case will justify the expence, it is generally the duty, as it is the interest, of the solicitor to employ counsel. We think the Bar may rely on this fact as a sufficient security against any undue encroachment on their province, and that it is unnecessary to resort to any measures for enforcing the delivery of briefs.

EXAMINATION STUDIES.

"CRAMMING."

Mr. Warren, in his Lectures on the Moral, Social, and Professional Duties of Attorneys and Solicitors, thus refers to the nature of the examination:—

"You will appear before a tribunal of five gentlemen, four of whom are persons of high standing and great experience as attorneys and solicitors, and the fifth, who presides over them, is one of the Masters of the Superior Courts at Westminster. These gentlemen are charged with a grave responsibility in the matter: for they will have, in passing you, to 'testify' in their certificate that you are 'fit and capable to act as an attorney and solicitor.' Rely upon it, that they will not lightly so 'testify:' for they would be betraying a great trust confided to them: and if, on the other hand, they cannot conscientiously 'pass' you, and you quarrel with their decision, your chances of success, on an appeal to the judges, are somewhat precarious!—The written questions which will be placed in your hands, traverse the whole field of the Law. They are, as you know—first, 'The Common Law and Statute Law, and the Practice of the Common Law Courts; secondly, Conveyancing; thirdly, Equity, and the Practice of the Equity Courts; fourthly, Bankruptcy, and the Practice of the Bankruptcy Courts; fifthly, Criminal Law, and Proceedings before Magistrates.' On each of these heads, you will have fifteen questions proposed to you, to be answered *proprio marte*. I have seen them, and would rather that you had to answer them, than I! Far be it from me to seek to alarm you; but you will find the examination a real one: not unduly severe, but fair and searching, as I have often had opportunities of ascertaining; calculated to test the true extent and quality of your professional knowledge, and to defeat a mere noxious and delusive *cram*—if I may use such a word—for the occasion."

The condemnation which is thus inflicted by Mr. Warren on the practice of "cramming" for the examination has been also powerfully censured by another eminent professor, Mr. De Morgan, at University College, from whose address we extract the following:—

"A student whose thoughts dwell upon his examinations only, and who reads for them as for an ultimate end—thinking of processes as how far they will help him in answering the questions asked, and of results, as to what their chance is of being in the printed papers, does not take a good mode of fixing anything in the mind for future use. It would be strange indeed if he lost everything; but I assert, as a matter of fact, that not only does the knowledge thus obtained quickly evaporate in great part, but the habits produced by such acquisition are of inferior soundness and less utility.

"Students may rely upon it, that the permanence of their acquisitions depends much upon the state of mind under which they are made; I mean the state of mind with respect to what the knowledge is wanted for. We can tell what you have got; none but yourselves can tell what arrangement you have made for keeping it.

"The student does not address himself to the subject of his studies with a view to the application of sufficient and deliberate thought upon one thing at one time. He employs himself in collecting without an attempt to digest. He puts by his unfinished and half-learnt material, to await the time when the examination is close at hand. Then, in the few days or weeks which precede the trial, he makes a rush at his crude mass of ill-understood notes, and endeavours to charge his unfortunate memory with the whole of it.

"All that is wanted is to show a mass of learning on the day of examination, and to make one successful effort.

"I need hardly remind you that the habits, formed by a student, whose studies, whose thoughts are occupied by the questions—Will this tell? How much of this shall I want? Will it be set?—are not those which are most likely to make an active inquirer, a sagacious reasoner, a judicious expositor of the balance of facts and arguments."

PALACE COURT PRACTICE.

To the Editor of the Legal Observer.

SIR,—Permit me to draw the attention of yourself, and the profession generally, to a grievance *"quod magis ad nos pertinet;"* I mean the PALACE COURT, and the code by which some, not all, of its six practitioners think fit to regulate their proceedings. A brief statement of facts will best explain my meaning.

Some months ago, a military friend of mine, Mr. *A.*, returning from India, with a handsome competence, hired from a maiden lady a furnished dwelling-house at 5*l.* per week, the contract being made through the medium of her agent, Mr. *B.* Scarcely had my friend entered, when his cook discovered that the kitchen range and boiler needed repair; he sent his footman to the house-agent to remonstrate; the latter, "after examination had," condemned his employer's boiler as unfit for service, and replaced it with a new one; this was in June last. In July and August, some further trifling repairs were effected, and eventually the house-agent sent in an account to Mr. *A.*, demanding 11*l.* 4*s.* for the new boiler and the reparations; the latter, naturally enough, remonstrated, but at the same time expressed his willingness to pay anything that was reasonable, not because he was bound either by law or *in foro conscientiæ* to do so, but because he wished to act with liberality towards his landlady, who had, as it appears, "seen better days."

This generosity on the part of Mr. *A.* was characteristically requited by the house-agent demanding, through one Mr. *C.*, of Clement's Inn, not 11*l.* 4*s.*, the sum originally charged, but 16*l.* 12*s.*, with an extra 3*s.* 6*d.* for "correspondence," and a threat of process if the amount was not remitted in three days. To this application Mr. *A.* replied with extreme courtesy, explaining the real facts of the case to Mr. *C.*, and referring him to me as his attorney, should Mr. *B.* be resolved to take proceedings. To make assurance doubly sure, I called mysalf in Clement's Inn, and saw a clerk of Mr. *C.*'s, to whom, in his master's absence, I showed the house-agent's original bill, repeated my friend Mr. *A.*'s explanation, and finally, undertook to appear for him, if necessary. The clerk, a civil lad enough, showed me Mr. *A.*'s letter to his master, naming me as his attorney, and added, that it seemed very evident that their client (*B.*, the house-agent,) was in error, but that at all events no further step should be taken in the matter without previously communicating with me. I left my compliments for Mr. *C.*,—and Mr. *A.*, and I, of course, supposed the affair ended; not so, however: a day or two afterwards, Mr. *A.* was disturbed at his breakfast-table by an intimation that a man wished to speak with him from one Mr. *Z.*; recognizing no such name, and believing that his visitor was an impostor, my friend bid his valet tell the man that he was engaged, and proceeded quietly with his meal; as he left the house, however, the messenger, a worthy descendant of the "follower" immortalized by Goldsmith,[a] and who had in the meantime acted upon Sir Toby Belch's principle,—"Scout me at the corner for him like a bailiff,"—advanced, and thrusting a slip of paper into his hands, exclaimed, "Mr. *Z.!*" and vanished.

On examination, this document turned out to be a writ, issued by Mr. *Z.*, of Clifford's Inn, an attorney of the *Palace Court;* to him, therefore, I proceeded, calling in my way at Clement's Inn, where Mr. *C.*'s clerk, with some confusion, and as if conscious that he had been mixed up in a very dirty business, protested earnestly "that the matter

[a] *Bailiff*, to Mr. Honeywood,—"Ah, if your honour knew that piece of flesh as well as I do, you'd be perfectly in love with him; scents like a hound, sticks like a weasel."—*Good-Natured Man*, Act 4.

was no longer in their office." On reaching Clifford's Inn, I was referred by Mr. *Z.* to his representative, a not unfavourable specimen of what Douglas Jerrold calls "the genus gent;" to him I showed his client's own bill of charges, (11*l.* 4*s.*,) reiterated that Mr. *A.* had ever been, and still was, willing to pay all that justice, or even liberality could require, and added that as I had, as is usual among practitioners who are gentlemen, given my undertaking to appear for him, if necessary, I could not but think that it was hardly courteous to serve him with a writ in the open street, in violation of at least implied good faith, and without a single word of previous warning or explanation. I further stated that, although in this instance such sharp practice was of little moment, seeing that Mr. *A.* was a private gentleman, and his credit could not be lightly shaken, yet if the same indiscretion (to use the mildest term) had been displayed towards a city merchant or west-end banker, the most disastrous consequences might have resulted from it.

In reply, I was informed that as I was not an attorney of the Palace Court, and therefore could not appear for Mr. *A.*, the courtesy of any previous warning, either to him or to myself, was needless; that the 16*l.* 12*s.*, with the costs of the writ, must be forthwith paid; and that, as to my making the matter public, which I had hinted my intention of doing, I might, if I pleased, address 500 letters either to yourself or to the editor of "The Times," though if I did so, it was at my peril, but that it would be unavailing, since his employer had paid for his situation in the Palace Court, and had a right to and would exercise his privileges. As you may well suppose, sir, this exhibition of—how shall I designate it—politeness (?) shortened my stay in Clifford's Inn; allowing the "gent," however, four and twenty hours to recollect himself, I called again the next day, and laying 20*l.* in Bank of England notes before him, requested him to take the amount of his client's bill, and his employer's costs, and hand me the difference, with a stamped acknowledgment for the money. To this proposition, which was, one would think, a very reasonable one, Mr. *Z.*'s representative again demurred, condescending, however, to take down my name and address in writing, and promising to "communicate with his client;" possibly he did so, for though I myself received neither line nor message from him, Mr. *A.*, a few days afterwards, brought me a notice of declaration, bearing the name of *Z.*, and served, I need hardly say, in deliberate and flagrant breach of the well-recognized and universal understanding among *gentlemen*, that when an attorney promises to "communicate with his client," before accepting the amount of that client's bill and of his own costs from his opponent, the latter is entitled to some intimation of the result of the "communication" ere fresh expenses are incurred. Thus matters stand at present.

Let me be just, however. The line of conduct followed by Mr. *Z.* and his "representative" is the exception rather than the rule of the practitioners of the Palace Court, one of whom (there are but six of them) assures me, and I believe, that he and others of his brethren, when informed by an attorney of a *Superior Court* that he is instructed to appear for a defendant who either is, or fancies that he is, assailed unjustly, sends in reply a civil letter, explaining that, though this cannot be allowed, seeing that it manifestly trenches upon their exclusive privileges, yet that his correspondent may be permitted a few hours' breathing time, either to settle the demand, or to select for his client a defender *from among the other five*. The result of this affair, sir, I will, with your permission, in due time communicate. To my client the money in dispute is of little consequence; to myself,—Mr. *B.*, the house-agent, Mr. *C.*, of Clement's, and Mr. *Z.*, of Clifford's Inn, are alike entire strangers; the "representative" of the latter gentleman I never saw but twice, and though he is by no means ill-favoured, I have no desire to behold his countenance again. It is indeed rather with the system than with the individuals that I am discontented. Yet surely, sir, it is high time that this monopoly should be put an end to; the six practitioners being, of course, previously recompensed by a general poll-tax levied on the lieges resident within a circuit of twelve miles around Queen Victoria's dwelling; the citizens of London being, however, exempted from contribution, seeing that they are subjected to similar inflictions, not indeed in the *Palace*, but in the *Lord Mayor's Court*.

Meanwhile, sir, do, for mercy's sake, advise us; Mr. *A.* and I are at our wits' end—in what our transatlantic brethren call a "fix;" the Council of the Law Institution cannot aid us, Messrs. *C.* and *Z.* not being members of their association.

LEGALIS.

ANNUAL CERTIFICATES OF ATTORNEYS.

IN order to procure the Registrar's Certificate on Saturday the 16th instant, which is the last day for renewing the Stamped Certificate, it is necessary to leave the Declaration, signed by the attorney or his partner, or London agent, on Monday the 11th instant, at the Office of the Incorporated Law Society. The act provides, that the Registrar shall have six days to prepare the certificates, and when it is considered that there may be several thousands to examine, complete, and sign, the time is not too long.

We understand that 7,000 only have yet been issued, and there are consequently nearly 3,000 more to be prepared.

PROCEEDINGS IN THE COUNTY COURTS.

BILLS OF EXCHANGE UNDER 20*l.*

To the Editor of the Legal Observer.

SIR,—In the number of your journal for 25th November, a doubt is raised, whether an action can be maintained in the Superior Courts for recovery of the amount of a bill of exchange under 20*l.*, and the 129th section of the County Courts Act is cited, and also certain dicta of the judges upon the point. In order to clear away some of the judicial mist, I will at once admit what I believe has never been disputed, viz., that bills and notes have no locality, and let me ask, is it not equally clear that bills and notes are "contracts?" if so, are not "contracts" expressly included in the very terms of the section referred to? Of course until the point is judicially decided by one of the Superior Courts, it is open to speculation, but, in my humble opinion, if the point is to be decided according to the popular and plain language of the County Courts Act, the Court above must conclude that bills and notes under 20*l.* are only recoverable in the Inferior Court, so as to entitle the plaintiff to costs. T. W. H.

NEGLIGENCE OF OFFICERS.

SIR,—I put myself to the trouble and expense of summoning a debtor to the Westminster County Court, and obtained judgment, and having incurred the additional and vexatious proceeding of a judgment summons, in other words, a summons to show cause why defendant had not paid attention to the first summons, a thing unheard of in the Superior Courts, except in cases of long neglect or indolence on the part of the plaintiff, and where it might be reasonably supposed defendant might have possibly forgotten the matter; and, on going from my residence at Camden Town, down to Pimlico, to meet the officer of the Court to identify the defendant, I was informed by this very officer, that he had several judgment summonses against this same defendant, and that he knew the defendant had long since left his last known place of abode, and was not to be found.

Will you allow me to ask how it comes to pass that this self-same officer is allowed to effect service of the primary summons in the action by merely leaving it at the defendant's residence, without making any inquiries? for if he had taken the trouble, he must have been informed that defendant had long since left; and why it is that I was suffered to proceed in the action, and be occasioned useless expense, when the officer who was instructed to serve the judgment summons knew so well that the defendant had absconded. In any other Court of Judicature I should have appealed to the judge, and, no doubt, received some reply, satisfactory or not, as the case may be; but in these Inferior Courts, I lament to say, that it is worse than ridiculous to make the attempt, and as to getting back any fees once paid, all you receive is an insulting grin.

A VICTIM.

NOTES OF CASES IN MICHAELMAS TERM.

MOTION AFTER A DECREE DISMISSING A SUIT.

A SUIT was instituted by a corporation to recover port dues. An issue at law was tried, and a verdict found against the corporation. The cause was afterwards heard and the bill dismissed, but prior to which a motion for a new trial had been made and refused. On an appeal to the Lord Chancellor against such order it was objected that the appeal could not be heard as there was no suit pending. The Lord Chancellor held, that he could not entertain the motion for a new trial, the bill having been dismissed, and it would be a matter for consideration whether it should be brought on with an appeal from the decree by which the bill was dismissed. *Corporation of Rochester* v. *Lee*, Lord Chancellor's Court, Nov. 9.

SPECIFIC PERFORMANCE OF CONTRACT.—COSTS.

A suit was instituted to carry into effect an agreement contained in two letters for the sale of property at Mile-end for 3,000*l.* The question, on further directions, related principally to the costs. Lord Langdale observed, that the defendants had denied the contract; the decree had established it, and therefore the defendants must pay the costs. *Gibbins* v. *North-Eastern Metropolitan Asylum.* At the Rolls' Court, 17th Nov.

TRUSTEES' LIABILITY FOR LOSS.—NO ALLOWANCE FOR GAIN.

A testator, besides other large property, possessed London Dock Shares, and a mortgage on tolls. It was charged against the trustees that they should have converted this property into Consols at the end of a year from the testator's death. A loss had accrued on some of the property, and the question was, whether the benefit arising on other parts of it could be allowed to the trustees. Lord Langdale said, if trust monies were dealt with in any manner contrary to the trust, the trustees were liable for all loss that might occur; but if gain followed they could not receive it, nor set-off any profit from dealings with the fund. *Robinson* v. *Robinson*, Rolls' Court, Nov. 20.

FIAT IN BANKRUPTCY TO DISSOLVE PARTNERSHIP.

In 1846, certain parties entered into copartnership as engineers. In July last, disputes arose between them, and terms of dissolution were proposed, but not carried out. One of the partners filed a declaration of insolvency, and his father issued a fiat thereon. The other partner now petitioned to annul the fiat on the ground of fraud. The Vice-Chancellor was satisfied, upon the evidence, that the father was assisting his son improperly to obtain a dissolution of the partnership, and therefore annulled the fiat at the father's expense. *Anon.*, V. C. Knight Bruce, (in Bankruptcy,) 8th Nov.

PARTNERSHIP IN PROFITS.

Advances of money were made to carry on business in an undertaking to pay 15*l.* per cent. out of profits. It was alleged that this and other circumstances constituted a co-partnership, and the borrower having become bankrupt, the lender's proof was rejected under the fiat. The Court offered to direct a trial at law, but which the assignees declined. His Honour, upon the evidence as it stood, held there was no partnership, and declared the petitioner entitled to prove his debt. *Ex parte Simson, in re Millar,* V. C. Knight Bruce, Nov. 15.

SALE IN BANKRUPTCY.—RE-OPENING BIDDINGS.

An application was made to re-open the biddings for sale, of a West India estate under a fiat. The petitioner offered an advance of 500*l.* over the amount of the sale. It was urged, that the principle of opening biddings having been established in equity, it should also, for the benefit of creditors, be allowed in bankruptcy. The Court directed a re-sale, the petitioner undertaking to bid 1,250*l.*, and the respondent being indemnified for his expenses. *Ex parte Lee, in re Higginson,* V. C. Knight Bruce, Nov. 15.

CONSTRUCTION OF SHIP REGISTRY ACTS.

In an action to recover the price of a boat of seven tons' burthen, registered pursuant to the statutes 3 & 4 W. 4, c. 55. and 8 & 9 Vict. c. 89, it appeared that the interest had not been transferred by bill of sale, pursuant to the 34th section of the latter act; and the defendant sought upon this ground to repudiate the contract. It was contended for the plaintiff that the boat being less than 15 tons' burthen, did not require to be registered at all, either originally or upon a transfer, but it was insisted on the other side, that although the original registry may not have been necessary, the boat by registration acquired all the privileges of a registered vessel, and that the transfer must be attended with the formalities required by the Ship Registry Acts. The Court however decided, that the original registration was unnecessary, and that a registration upon transfer was likewise unnecessary. *Benyon* v. *Cresswell,* Queen's Bench, Nov. 17.

EXECUTION AGAINST MEMBER OF COMPANY, WITHOUT SCI. FA.

The 68th section of the Joint-Stock Companies Registration Act, 7 & 8 Vict. c. 110, provides, that execution may issue against the person or property of a shareholder, by leave of the Court or a judge, without any suggestion or *scire facias;* and it has been held that the power to issue execution without a *sci. fa.* under this section is not limited to suits by a shareholder against the company, or by one shareholder against another to recover contribution; but that it directly refers to executions on judgments in actions by a creditor against the company, and does not apply to actions between shareholders, or by shareholders against the company. *Peart* v. *The Universal Salvage Company,* Com. Pleas, Nov. 9.

REGISTRATION APPEAL.

A rate was made in September, 1847, for the borough and township of Lancaster, and one *T. B.*, the occupier of a house in the borough, was rated at 12*s.* to the poor rate, which rate, by reason of the poverty of *T. B.*, he was excused from paying in October, 1848. It was urged before the revising barrister that *T. B.* was not entitled to vote, because he had within twelve calendar months received parochial relief or other alms. The revising barrister overruled the objection, and allowed the vote. Upon appeal from this decision, it was contended that an excuse from rates under the stat. 54 Geo. 3, c. 17, s. 11, was equivalent to parochial relief, and, within the meaning of the 2 W. 4, c. 45, s. 36, which enacts, "That no person shall be entitled to be registered in any year as a voter in the election of a member or members to serve in any future parliament for any city or borough, who shall within twelve calendar months next previous to the last day of July in such year have received parochial relief or other alms which, by the law of parliament, now disqualify from voting in the election of members to serve in parliament." Roger's Elec., 17, 2 Wms. Exors., 1,385, 2 Burr. 152, and 1 Peck. C., 508, were cited.

The Court decided that there was a substantial difference between receiving relief and being excused from giving relief to others. On the general principle that, *primâ facie,* the voter was to be considered as entitled to have his vote, unless he had done something amounting to a disqualification by the receipt of parochial relief or alms, and that the grounds of disqualification were not to be strained against the franchise, but the franchise was rather to be favoured. The Court affirmed the decision of the revising barrister. *Machiter* v. *Dunn, Town Clerk of Lancaster,* Com. Pleas, Nov. 16.

AUTHORITY OF AGENT TO INDORSE BILLS.

An accommodation bill for 250*l.* was indorsed to Alexander & Co., by one Blakeley, "as per procuration of the Newcastle Joint-Stock Banking Company. W. Blakely, Manager:"—such indorsement having been made after the company stopped payment in 1846. In an action by Alexander & Co., against the banking company, it was proved that Blakely was in the habit of indorsing the bills of the banking company before the stoppage as "per procuration," under a resolution of the directors. The learned judge who tried

the cause told the jury that unless they thought the facts amounted to a general and unqualified authority to Blakely to indorse bills for the company, their verdict should be for the defendants. Upon a motion for a new trial on the ground of misdirection, Story on Agency, sec. 126; Paley on Agency, p. 194; Smith's Merc. Law, p. 104; *Attwood* v. *Mullins*, 7 Barn. & Co., 278, and *Withrington* v. *Herring*, 5 Bing. 458, were cited.

The Court was of opinion that the judge had rightly directed the jury, for the manager had not indorsed the bill in the name of the bank, but with a special intimation to the public that it was the act of a person professing to have the special authority of the bank, and not of the bank itself. When Blakely said "per procuration," he said in effect, "I indorse this bill by an authority conferred on me by the bank for this purpose." The man taking a bill so indorsed was bound to satisfy himself that the indorser had the authority he professed. He took the bill with the risk that the indorser might have no such authority, and if it so turned out, the indorsee could not claim as against parties who had not given authority to the indorser. The rule for a new trial was therefore discharged. *Alexander* v. *M'Kenzie*, *P. O. Newcastle Banking Company*, Com. Pleas, 20th Nov.

COMPETENCY OF WITNESS UNDER LORD DENMAN'S ACT.

Where a witness tendered by the defendant admitted, upon his examination on the *voir dire*, that he had undertaken to share the debt and costs in the action with the defendant, the Court held that his evidence was properly received under Lord Denman's Act, (6 & 7 Vict. c. 85,) as he only stood in the position of one guaranteeing the defendant to the extent of a moiety of the debt and costs, and was not a "person in whose immediate and individual behalf" the action was "defended either wholly or in part."

In the same case the point was raised, whether under the plea of *non assumpsit*, in an action for money had and received to the plaintiff's use, evidence of the *jus tertii* was admissible; but, after taking time to consider, the Court declined to decide this question, upon the grounds that the evidence left the facts necessary to raise the question in doubt. Upon this ground, a rule *nisi* was granted for a new trial. *Sage* v. *Robinson*, 20th Nov. and 1st Dec., Exchequer.

RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Vice-Chancellor of England.

Exparte Free School of Louth, In re, the East Lincolnshire Railway Act. Nov. 10, 1848.

CHARITY.—COSTS.—LANDS CLAUSES CONSOLIDATION ACT.

Where a bill had been filed against a charity, but dismissed, and certain costs, as between solicitor and client, necessarily incurred in the defence of the suit, had not been provided for: Held, *that a sum of money in Court arising from a subsequent purchase of a portion of the land by a railway company was liable to pay such costs under the 69th section of the Lands' Clauses Consolidation Act.*

In this case a suit had been instituted by the Mayor and Aldermen of Louth, for the recovery of land belonging to a charity in Louth; the bill was dismissed, but certain costs, as between solicitor and client, necessarily incurred by the charity in defending the suit, had not been provided for by the decree. A portion of the charity land was subsequently purchased by the East Lincolnshire Railway Company, and the purchase-money paid into Court. A petition was now presented for the purpose of having a portion of such money applied in defraying those costs, under the 69 section of the Lands' Clauses Consolidation Act. The words of the act as to the application of the money so paid in are as follow:—"The sum may be applied to some one or more of the following purposes, (that is to say)—in the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid."

Mr. *Nalder* appeared on the petition, and read an affidavit by the secretary of the charity, stating that the income was but just sufficient to keep up the charity, and there was no other fund except the one in Court, out of which the costs could be paid.

The *Vice-Chancellor* said, it seemed to him to be a very reasonable request, the costs had been incurred in supporting the trustee's title to the charity lands, and he should therefore make the order.

Vice-Chancellor Knight Bruce.

Wilmer v. *Currey*. June 12th, 1848.

DEMURRER.—PARTIES.—JOINT LIABILITY.

Three partners dissolved partnership as to one, and the two jointly covenanted to pay all debts on which all were liable, and to pay the retiring partner 3,000l. by three yearly instalments. The debts were not paid, and after one instalment had been satisfied, one of the remaining partners

died, leaving all his property to his widow and executrix. The retired partner filed his bill against the other partner and the executrix, for payment of the two instalments, the debts of her testator and the debts of the partnership in a due course of administration. The defendants separately demurred for want of equity, and that the bill was filed for distinct claims, and the same was allowed.

THIS case was argued upon demurrers, put in separately by the two defendants, for want of equity, and for that the bill was exhibited against them "for several and distinct matters and causes, in many whereof, as appears by the said bill, this defendant is not in any manner interested or concerned. The case made by the bill was this:—By indenture dated the 25th of May, 1846, made between the plaintiff, (W. Wilmer,) of the one part, and B. Currey, (since deceased,) and W. Currey, one of the defendants, of the other part; after reciting, among other things, that a partnership had existed between the parties thereto as attorneys, and that they had agreed to dissolve the same, so far as the plaintiff was concerned, it was witnessed that, in consideration of 3,222*l.* 16*s.* 6*d.* paid to the plaintiff by B. Currey and W. Currey, and also in consideration of the covenant thereinafter contained on the part of B. and W. Currey, for the payment of the further sum of 3,000*l.*, the parties thereto mutually covenanted to dissolve the partnership, so far as concerned the plaintiff; and for the considerations aforesaid, the plaintiff assigned his own one-third of the partnership business to B. and W. Currey, their executors, administrators, and assigns; and B. and W. Currey covenanted for themselves, their heirs, executors, and administrators, that they the said B. and W. Currey, their executors and administrators, would, as soon as conveniently might be, pay and discharge all the debts of the firm which the plaintiff jointly with them should or might be liable to pay, and also would from time to time and at all times thereafter indemnify the plaintiff from the same and all costs in respect thereof; and the said B. and W. Currey thereby for themselves, their heirs, executors, and administrators, covenanted with the plaintiff, his executors, administrators, and assigns, that they the said B. and W. Currey, or one of them, would pay, or cause to be paid, to the plaintiff, his executors, administrators, or assigns, the sum of 3,000*l.* in manner following, that is to say:—the sum of 1,000*l.* on the 28th of May, 1847; the further sum of 1,000*l.* on the 28th of May, 1848; and the further sum of 1,000*l.* on the 28th of May, 1849. B. and W. Currey carried on the business from the time of the dissolution until the death of B. Currey on the 13th of March, 1848, since which time W. Currey carried on the same. After the dissolution large sums had been received in respect of the business, but B. and W. Currey had not, nor had either of them, paid the debts of the firm, whereby they broke their covenant, and a large amount of debts was due at the death of B. Currey, and divers still remained unpaid. The first sum of 1,000*l.* was duly paid, but the second and third remained unpaid. B. Currey, by his will, dated 11th March, 1823, and republished in 1825, gave all his real and personal estate to his wife Anna Currey, (the other defendant,) absolutely, and appointed her and R. Gossip, who died in the testator's lifetime, executrix and executor, and she duly proved the same. B. Currey was indebted to divers persons besides the plaintiff, and several of his debts remained due and unpaid. B. Currey was possessed of large real and personal estate, and his executrix possessed herself of large personal estate and entered into possession of the real estate. The bill charged that W. Currey was interested in taking the account of what was due to the plaintiff under the said covenant, and in taking the account of all such of the debts of the said late co-partnership of the plaintiff and B. and W. Currey as still remained unpaid, and that he was a necessary party to the suit. The bill then prayed that provision might be made by a decree for payment in due course of administration of the assets of B. Currey of the two sums of 1,000*l.*; for payment of the unpaid debts of the partnership of the plaintiff and B. and W. Currey, and for payment of B. Currey's debts; for an account of what was due for the two sums of 1,000*l.*, of the debts of the partnership, and to the creditors of B. Currey; and in case the executrix did not admit assets, then an account of B. Currey's personal estate come to her hands, and that the same might be applied in a due course of administration; and in case of a deficiency, that such deficiency might be raised out of the realty.

Mr. *Russell* and Mr. *Hetherington* for the first demurrer.

Mr. *K. Parker* and Mr. *Currey* for the second demurrer.

Mr. *Wigram* and Mr. *Lovat* for the bill.

The cases of *Sumner* v. *Powell*, 2 Mer. 36; *Exparte Kendall*, 17 Ves. 541; and *Clarke* v. *Bickers*, 14 Sim. 639, were cited.

His Honour said:—This is a bill filed by the plaintiff on behalf of himself and all the unsatisfied creditors of the late Mr. Currey, and I think if this particular bill is not sustainable against the executrix, it is also not sustainable against Mr. W. Currey. The question then seems to me to be, whether the bill is sustainable against the executrix? For that purpose, I will first assume that the covenants in question for the payment and indemnity are, according to legal construction, joint. Now, I agree that, independently of the instrument containing these covenants—independently of the arrangement which the deed contains and which these covenants were to carry into effect, there was a several demand, or there would be now a several demand on the part of the plaintiff, against the executrix, in respect of that part of it which was the subject-matter of the deed; but a liability different in extent and nature—not merely different because it was a

simple contract liability, and the liability now in question being created by deed was a liability by specialty. I do not mean that, independently of the difference in the liability, there are not other material and important differences. Now, the object of the present suit is not to enforce that less and circumscribed liability which would have existed independently of the deed, but that particular liability created by the deed, and which would not have existed, and would not exist but for the deed; and I am of opinion, moreover, that the plaintiff, seeking as he does to avail himself of the deed, must take the deed as he finds it, and if the covenants for payment and indemnity which are in question are according to legal construction joint, then the bill is unsustainable against the executrix. My present impression is, that the covenants are according to legal construction joint, and the demurrer must be allowed.

Vice-Chancellor Wigram.

Phillipson v. *Gatty*. Jan. 15—17, 1848.

PRACTICE.—PARTIES.—CESTUIS QUE TRUST.

In a suit against trustees of a fund for its restoration, it must be shown that all the parties interested in the fund, and the individuals of each class interested, are made parties, before the suit can be heard on the merits.

THIS was an objection to an amended bill for want of parties. The original bill had been filed against the trustees of the marriage settlement of Mr. and Mrs. Phillipson, (after the death of the former,) for the restoration of the trust fund, alleged to be lost by a breach of trust, and for a change of trustees. There was a son and a daughter of the marriage: the son had children, who took an interest in the trust fund through an appointment made under a power in the settlement. The children of the son were not made parties to the original bill, which was successfully objected to upon that ground. The bill was then amended by the addition of two other persons as parties defendant, with an account that they were the only children then living of the son. This averment was not proved in evidence, and the cause was again set down for hearing, without any further answer having been filed by the original defendants.

Bethell, *Wood*, and *Smith*, for the trustees, submitted at the hearing, that the suit was still defective for want of parties; that all the children of the son were necessary parties; and that it had been neither proved nor admitted that the new defendants were the only children of the son. They contended that all the *cestuis que trust* should be before the Court to prevent the trustees being harassed by repeated bills to account; and they urged, moreover, that new trustees could not be appointed in the absence of any *cestui que trust*. *Hawkins* v. *Hawkins*, 1 Hare, 543.

Walker and *Giffard*, for the plaintiff, offered to waive the relief founded on the change of trustees, and submitted that the rest of the decree sought was beneficial to the other *cestuis que trust*, being for the protection of the fund, and might be made. They cited *Montague* v. *Nucella*, 1 Russ. 173; *Malone* v. *Malone*, West, 637; *Kimberley* v. *Tew*, 4 Dru. & W. 139.

Romilly and *Rasch* for the other *cestuis que trust*.

Jan. 17. The *Vice-Chancellor*. The plaintiff is one of many *cestuis que trust* interested in the fund, of which the two first-named defendants are trustees. Classes of persons, children and grandchildren are some of the *cestuis que trust*. The object of the suit is to compel the trustees to replace part of the trust fund, alleged to have been lost, and to have new trustees appointed. The bill does not seek any declaration of right as to the trust fund. To the original bill none of the classes of *cestuis que trust* were made parties; but it was assumed that it was sufficient that some of the parties interested were parties to the suit. At the hearing an objection was taken upon this ground, and allowed. If, in such a case, the decision be altogether in the plaintiff's favour, the absent *cestuis que trust* may not be damnified; but if the case were decided against the plaintiff, then they would be damnified, unless they were held, not bound, and at liberty to agitate the matter afresh; and as the trustees have an interest to prevent that, I thought they had a right to require that the suit should be so constituted that their liability should be determined once for all. The cause stood over accordingly, in order to amend by adding parties, and by the amendments certain persons are made parties, who are alleged to constitute the whole of the classes referred to, but no evidence has been given of the fact; and the objection is again urged by the trustees. It was admitted that if the suit were for distribution, proof must be given that the whole of the class was before the Court. But it was said that this was not necessary for the purpose of arguing the points raised in this case, and the case of *Malone* v. *Malone* was referred to. Now, in a suit for distribution, the Court cannot effectually save the rights of absent parties, for the fund is paid over. The trustees would be indemnified by the decree, and the absent parties, by the distribution, would lose the security for their shares, and would have to pursue their rights against the parties who had shared in the distribution. There is no magic in the word "distribution," but where the mischief is the same, the rule must be the same. All that I understand by what Lord Cottenham says in *Malone* v. *Malone*, is this, that Lord Eldon would sometimes hear the case *de bene esse*, in the absence of parties who might be interested in the subject of the suit, in order to see what course he should take. If his view was favourable to the absent party, no harm might arise from this course; but if against them, he could not decide the case in their

absence so as to bind them; and the trustees had a right to require that the questions in the suit should be determined once for all. I have often taken the same course, without being aware of Lord Eldon's authority, but not without feeling that it is liable to this objection, that the Court has in effect prejudged the case behind the backs of the absent parties. The question argued on the amended bill is, without doubt, the very same question which was determined by me at the hearing of the original bill.

Objection allowed.

Court of Queen's Bench.

(Before the Four Judges.)

Lowley v. *Rosse.* Michaelmas Term, 1848.

SMALL DEBTS COURT.—BILL OF EXCHANGE.

The Court made a rule absolute for entering a suggestion on the roll to deprive the plaintiff of costs in an action brought on a bill of exchange under 20*l.*, *where the parties were within the jurisdiction of the Act* (10 *&* 11 *Vict. c.* lxxi.,) *for recovery of Small Debts within the City of London.*

Quære, *whether the* 8 *&* 9 *Vict. c.* 95, *applies to actions on bills of exchange?*

Mr *Meymott* showed cause against a rule for depriving the plaintiff of costs, on the ground that this was an action which might have been brought in the Court for the Recovery of Small Debts, in the City of London. That Court had been established by the 10 & 11 Vict. c. lxxi., and applied to the recovery of small debts within the liberty of the City, and a certain jurisdiction around it. But the answer to this motion was, that this action was brought upon a bill of exchange, and a bill of exchange was an instrument which was especially of a transitory nature, and which could not therefore be said to give a cause of action arising in any particular jurisdiction. An action on a bill might be brought in any county, and the Court would not change the venue on the affidavit that the cause of action arose elsewhere. *Monsell* v. *Steel.*[a] In that respect a bill was unlike any other cause of action. The general Small Debts Act did not directly bring cases of bills of exchange within its operation, nor did it impliedly compel a person enforcing a bill to bring such an action in the Small Debts Court, though it allowed him to do so. *Bayley* v. *Roesons.*[b] This case falls within the 128th of the 9 & 10 Vict. c. 95, which gives a concurrent jurisdiction in small debts to the Superior Courts, in cases in which the cause of action does not arise "wholly or in some material point within the jurisdiction within which the defendant dwells." It does not arise here wholly or in some material point within the jurisdiction, for it equally arises wherever the bill is made payable.

Mr. *Greenwood*, in support of the rule. This case must be decided on the particular words of the act, and has in substance been twice decided on by Mr. Justice *Coleridge* in the Bail Court, and once by the Court of Exchequer. The first case was that of *Nind* v. *Rhodes*,[c] where it was held in the Bail Court, that the 129th section of the 9 & 10 Vict. c. 95, which prohibits a plaintiff from recovering his costs in an action brought in a Superior Court, for which a plaint might have been entered in the Small Debts Court, applies to actions on negociable instruments in the same manner as to other actions. The other case was that of *Butler* v. *Corney*,[d] where the Court gave no opinion on the point, but permitted the plaintiff to enter the suggestion. Then, Mr. Baron *Parke* said, that he should wish to be informed of the grounds on which the Lord Chief Justice of the Common Pleas, and his brother *Maule*, doubted whether the statute extended to bills of exchange, for that he did not understand those doubts. The Court of Exchequer would not, however, decide the question, but the difficulty there arose from the words of the statute, 9 & 10 Vict. c. 95,—"or where the cause of action does not arise wholly or in a material part within the county in which the defendant resides." These words are not to be found in this County Court Act, and the same difficulty therefore does not present itself.

Per cur.[e]—The rule must be absolute. There is at all events no doubt as to this particular act.

Court of Common Pleas.

Hayter v. *Fish.* Michaelmas Term, 1848.

COUNTY COURTS ACT, 9 & 10 VICT. C. 95.—SUGGESTION TO DEPRIVE PLAINTIFF OF COSTS.—SUFFICIENCY OF AFFIDAVIT.

It is no objection to the sufficiency of an affidavit in support of an application for a suggestion to deprive a plaintiff of costs under the 9 *&* 10 *Vict. c.* 95, *that it omits to name the plaintiff's residence, or that it does not, in showing the jurisdiction of the County Court, state any particular district Court of Middlesex.*

A reasonable primâ facie *ground is sufficient to warrant the entering of a suggestion on the record.*

A RULE had been obtained in this case calling upon the plaintiff to show cause why a suggestion should not be entered upon the record to deprive him of costs, under the County Courts Act, 9 & 10 Vict. c. 95. The affidavit upon which the rule was obtained stated, that before and at the time the action commenced, the defendant dwelt and carried on his business at Princess Row, Pimlico, in the county of Middlesex; that all the goods in

[a] 8 Mee. & W. 640. [b] 36 L. O. 168.

[c] 17 Law J., N. S., Q. B. 179. [d] 37 L. O. 74.

[e] Mr. Justice *Coleridge* and Mr. Justice *Wightman.*

respect of which the action had been brought, amounting in value to 8*l.* 15*s.*, were delivered to the plaintiff by the defendant, at his residence at, &c., aforesaid; that at the time when the action was brought the plaintiff did not dwell more than 20 miles from the defendant, but on the contrary thereof, the said plaintiff dwelt, and did still dwell, within 20 miles of the defendant; that the cause of action arose in a material point within the jurisdiction of the Courts within which the defendant dwelt and carried on business at the time of action brought; that the place where the defendant dwelt at the time of the commencement of the action, and where he still did dwell, and where the said goods were so delivered as aforesaid, was at the time of the commencement of the action, and still continue to be, within the jurisdiction of the County Court of Middlesex; and that such Court was opened and established, and a plaint might have been entered in the said Court for the said sum of 8*l.* 15*s.* at the time of the commencement of the action. The affidavit then negatived the other exceptions contained in the 128th section of the act.

Simon now showed cause. He objected to the sufficiency of the affidavit for first not stating where the plaintiff dwelt; secondly, it was not stated with sufficient certainty within the jurisdiction of what Court the material point of the cause of action arose. It merely stated the County Court of Middlesex, without specifying any particular Court or district, and in Middlesex there were no less than 11 County Courts. [*Maule*, J. It does not appear that the defendant lived within the jurisdiction of any Court having a right to try this action.]

Byles, Serjeant, contrà. The affidavit was not to be construed strictly like a special plea, and the late case in the Exchequer of *Butler* v. *Corney*, 17 L. J., N. S., Ex. 265, was an authority to show that the present affidavit was sufficient. *Rolfe*, B., there says,—"I doubt if there is any other reason why a party must come to us for leave to enter a suggestion, than that the party has not the custody of the record, and if he makes a *primâ facie* case, it seems almost a matter of right that the suggestion should be entered."

Per Curiam.—On the authority of the case directed by the Court of Exchequer, we think the present affidavit contains all that is necessary to be stated to warrant the entering of a suggestion upon the record. It shows a reasonable *primâ facie* ground, and that is sufficient to entitle the defendant to the record for the purpose of entering a suggestion, which may afterwards be traversed or demurred to, so as if necessary to have the question tried by a jury or decided by the Court.

Rule absolute.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF PROPERTY AND CONVEYANCING.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75.
Law of Costs, p. 35.
Law of Evidence, p. 56.]

ANNUITY.

Memorial. — Consideration. — It is not required to state in a memorial of an annuity how the consideration has been applied: it is only necessary to state the amount, and whether paid in money, bills, notes, &c. *Moody* v. *Hebbard*, 37 L. O. 9.

APPORTIONMENT.

Tenant in tail and remainder-man.—Rents.—Stat. 11 *G.* 2, *c.* 19.—*A.*, on his father's death, became tenant in tail in possession of estates, with remainder to his younger brother in tail. After the father's death, a suit was instituted on behalf of *A.* and his younger brother (both of whom were infants,) and a receiver of the rents of the estates was appointed. The younger brother was made a party to that suit, as being entitled to a portion out of the estates. *A.* died under 21, and without issue. At his death, the estates were held, as they had been ever since his father's death, *by yearly tenants under parol demises.*

Held, that *A.*'s administratrix was entitled to a proportionate part of the rents which were accruing due at his death. *Kevill* v. *Davies*, 15 Sim. 466.

BUILDING ON ANOTHER'S PROPERTY.

Mistake. — Tenant in common. — To a bill which alleged among other things, that the plaintiffs, believing themselves to be entitled, under a demise, to a dwelling-house and shop, entered into an agreement for a lease of the premises, then in a dilapidated state, to a tenant, in pursuance of which the tenant expended money in pulling down and rebuilding the premises; that the defendant, who was, as it afterwards appeared, the actual owner of a moiety of the property, knew the true state of the title, and had made a claim to the whole property, which claim he re-asserted a few days before the improvements were commenced; that he knew also that the improvements were being made; and that the plaintiffs and their tenant were acting under a mistake, and, nevertheless, permitted the works to be carried on without any objection during their progress; and praying that the defendant might be decreed to confirm the lease, and in the meantime be restrained from evicting the

tenant; a demurrer for want of equity was allowed.

Held, also, that in such a case, the principle is the same whether the owner and the party making the expenditure by mistake are strangers, or tenants in common of the property.

That the owner having once and recently given notice of his claim to the property, was not, in order to exclude any equity in respect of the expenditure on the ground of mistake by the party in possession, or of acquiescence on his own part, bound again to assert it when the expenditure began, or while it was going on.

That, in order to exclude such equity, it was not necessary that the notice of his claim, given by the claimant to the party in possession, should disclose any particulars relating to his title; nor, if the claim which he made exceeded what he was entitled to, was the party in possession justified in disregarding it, or supposing it to be unfounded.

Although the Court will, by decree, restrain the setting up of an outstanding term to prevent the fair trial of a legal right, yet, after the trial of an ejectment has taken place, and a term has been set up whereby the trial of the merits of the case was prevented, and the party using it obtained a verdict and judgment, a suit cannot be sustained to set that judgment aside; nor will the fact, that the communications made before the trial by the party who so gained the advantage at law, led the other party to believe that the substantial question of the title would be tried in the ejectment, enable him to sustain a suit for such a purpose; but if there be any impediment to the trial of the legal right in another action of ejectment, a suit may be sustained for relief by removing that impediment to the trial of the right in such future action. *Masters, &c., of Clare Hall* v. *Harding*, 6 Hare, 273.

See *Covenant*.

CHARITY.

See *Mortmain Act*.

CONSIDERATION.

See *Annuity*.

CONVEYANCE.

Reference to Master to approve of Form.—Where it is referred to the Master to approve of a settlement in pursuance of an executory trust, the Court does not usually insert in the order declarations as to the interests which the parties are thereafter to take, but merely directs the Master to approve of a settlement in conformity with the will, articles, or other direction upon which it is to be founded. *Williams* v. *Teale*, 6 Hare, 254.

Cases cited in the judgment: Humberston v. Humberston, 1 P. Wms. 332; Bankes v. Baroness Le Despencer, 11 Sim. 508; Trevor v. Trevor, 13 Sim. 113.

See *Substituted Conveyance*.

COPYHOLDS.

Corporation.—Local act.—By a local act of parliament, a company was incorporated, and empowered to purchase certain lands; and all persons seised, possessed of, or interested in those lands, were empowered to convey their right and interest therein to the company, in the form prescribed by the act, which, notwithstanding some of the lands were copyhold, was adapted to the conveyance of freeholds only. A copyholder used that form, and afterwards died, without having made any surrender of the tenements comprised in it to the lord of the manor.

Held, that the company being a corporation, were not entitled to be admitted to the tenements, but that they were entitled to have the customary heir of the deceased tenant admitted; and the Court declared that, on his admittance, he would be a trustee for the company. *Grand Junction Canal Company* v. *Dimes*, 15 Sim. 402.

COVENANT.

Injunction against building.—Notice.— *A.*, being seised in fee of a house and a piece of open land near to it, sold and conveyed the house to *B.*, and covenanted for himself, his heirs and assigns, with *B.*, his heirs and assigns, that no building whatever should, at any time thereafter, be erected on the piece of land. He afterwards sold and conveyed the piece of land to *M.* in fee, and took a covenant from him in the terms of that which he himself had entered into with *B.* The house, after divers *mesne* conveyances, became vested in *X.* in fee; and the piece of land, after one *mesne* conveyance, became vested in *Y.* in fee. *Y.*, before the land was conveyed to him, *had notice of the covenant;* but, notwithstanding, he began to build upon the land. The Court, at the suit of *X.*, restrained him from continuing the building. *Mann* v. *Stephens*, 15 Sim. 377.

DEED, SETTING ASIDE.

Reforming deed.—Mistake.—A grant of annuity set aside on the ground of a mistake made in calculating the amount payable upon a given principle. The plaintiff, for a given sum, agreed to grant the defendant a life annuity to be calculated from the amount of a corresponding government annuity. The defendant's agent agreed to ascertain the amount. He accordingly did so *bonâ fide*, but the information he received afterwards turned out to be inaccurate. The plaintiff, relying on this information, granted an annuity based thereon, and which was of too large an amount. The defendant was aware of the mode of calculation, but the Court was unable to come to the conclusion that the defendant would have entered into the agreement if the correct amount of the annuity had been stated. *Held*, that, as there had been a mistake on both sides, the deed could not be rectified, but must be set aside altogether. *Held*, also, that as the price of a government annuity was so easily ascertainable, the plaintiff, if he had either relied on his own knowledge or on others unconnected with the defendant, would not have been en-

titled to relief. *Carpmael* v. *Powis*, 10 Beav. 36.

EQUITY OF REDEMPTION.

Trustees.—Payment of money out of Court. —Reference as to title.—Where a tenant for life of certain lands, with remainder to his children in strict settlement, offers to pay out of his own pocket one portion of the purchase-money for certain other lands to be settled to the same uses, the other portion to be paid by a sum of money in Court: the Court will not order the money to be paid to the tenant for life on his undertaking without a reference to the Master as to title.

Trustees are not justified in investing trust-money in the purchase of an equity of redemption. *Exparte Craven*, 35 L. O. 437.

FRAUDULENT FINE.

Custody of title deeds.—By an ante-nuptial settlement, lands of the wife were released to the use of the relessees to uses, and their heirs during the joint lives of the husband and wife, and the life of the survivor, on certain trusts, with a limitation to the use of the wife in fee, in the event (which happened) of there being no issue of the marriage. After the death of the husband, who survived the wife, the surviving relessee to uses, with a tenant in possession of the land under a lease from the husband, made a feoffment, and levied a fine to the use of himself in fee: *Held*, that a Court of Equity might entertain a suit instituted by the heir-at-law of the wife against the relessee to uses, to recover possession of the land and the title-deeds.

Semble, that the surviving relessee to uses, after the determination of his own legal estate, had no rightful title to the custody of the title-deeds, and could not be considered as holding them as a trustee for the reversioner; but,

Semble, that the fine was fraudulent, and that, whether void at law on that ground or not, the question of its validity ought not of necessity to be left to the decision of a Court of law. *Reece* v. *Trye*, 1 De G. & S. 273.

HEIR.

Buying incumbrances.—An heir buying up incumbrances on the descended estates is entitled, as against the creditors of the estate, to no more than he actually paid. *Lancaster* v. *Evors*, 10 Beav. 154.

MARRIED WOMAN.

Separate use.—Future coverture.—Direction not to sell or mortgage.—Bequest of leaseholds to a married woman, "for her whole and sole use during her life, free from the control of any *future* husband, and not to be sold or mortgaged, and, after her decease, to her heir or heirs, and provided her child or children should die before her, then that she may, at her decease, leave them to whom she will for the remainder of the term." The husband and wife demised the premises to a purchaser, and the purchaser demised them to another. The wife then filed her bill to have the under-lease set aside.

Held, that the gift was to the separate use of the wife, as well during the present as during a future coverture; that the under-lessees from the purchaser must be treated as having notice of the wife's interest; and that the under-lease to the purchaser should be set aside, but without costs. *Steedman* v. *Poole*, 6 Hare, 193.

See *Settlement*.

MEMORIAL.

See *Annuity*.

MISTAKE IN DEED.

See *Deed*.

MORTGAGE.

1. *Foreclosure. — Enrolment of order absolute. — Enlargement of time.— A.* and *B.*, in 1838, filed their bill for the administration of an estate of the residue of which they were each entitled to one-third. In 1840, they changed their solicitor in the cause, and appointed *F.* as such solicitor, who so continued until 1843, when they again changed their solicitor. *F.* then brought his action against *A.* (*B.* having gone out of the jurisdiction) for the amount of his bill of costs, and, in June, 1844, he recovered and entered up judgment in such action. In June, 1845, *F.* filed his bill for foreclosure under the statute 1 & 2 Vict. c. 110, as against *A.*'s third part of the property, the subject of the first suit. In July, 1846, *F.* obtained the common decree for foreclosure against *A.*, and (default being made) on the 23rd of March, 1847, the order for foreclosure was made absolute. The order absolute was then enrolled. *A.* had no property, except that to which she was entitled in the first suit, but the value of the property to which she was entitled in that suit was three or four times the amount of *F.*'s judgment-debt and costs. The Master had made his report in the first suit, and the cause stood for hearing on further directions, and on exceptions, when, on an application in June, 1847, the Court enlarged the time appointed by the Master for the payment of the debt and costs, notwithstanding the order absolute, and notwithstanding its enrolment. *Ford* v. *Wastell*, 6 Hare, 229.

Cases cited in the judgment: Nanny v. Edwards, 4 Russ. 124; Eyre v. Hanson, 2 Beav. 478; Edwards v. Cunliffe, 1 Madd. 287; Jones v. Creswicke, 9 Sim. 304; Coker v. Beavit, 1 Rep. in Chanc. 253.

2. *Sale. — Injunction.* — The circumstance that a mortgagee, with power of sale, has entered into a contract to sell a portion of the property comprised in the security for a sum greater than the amount due on the mortgage: *Held*, not a sufficient ground for restraining him from prosecuting an action upon the covenant for payment contained in the mortgage deed. *Willes* v. *Levett*, 1 De G. & S. 392.

See *Trust for Sale*.

MORTMAIN ACT.

Charity. — Land was conveyed by deeds dated in 1838, to such uses as *A.* should

appoint, and in default of appointment, to the use of *A.* in fee simple. By a deed dated in 1839, *A.* appointed the land to certain persons for charitable purposes. These deeds did not comply with the requirements of the statute 9 Geo. 2, c. 36. In 1846, all parties conveyed to trustees for the charitable purposes, and the conveyance was executed and enrolled pursuant to the statute: *Held*, that the prior deeds should have been so executed and enrolled. *Attorney-General* v. *Gardner*, 35 L. O. 609.

PEDIGREE.

See *Trust*, 1.

POWER.

Failure of issue of the appointer.—Construction, whether on deed or will.—Title.—Specific performance.—Real estate was devised in 1778 to the son-in-law of the testator for his life, remainder to his daughter (the wife of such son-in-law) for her life, remainder to her first and other sons successively in tail, remainder to her daughters as tenants in common in tail, with cross-remainders between them; and, in default of such issue of his daughters, to such person or persons as she should by deed or will appoint. In 1841, the daughter, the donee of the power, executed a deed-poll of appointment, which reciting the limitations of the estate by the will,—that she had not any issue of her body, and that she was desirous of exercising the powers subject to the life interest of her husband and herself as therein-after mentioned, —appointed that, from and after the decease of the survivor of her husband and herself, "and there being a failure of issue of her," the said donee of the power, the estate should go, remain, and be unto and to the use of the plaintiff, his heirs and assigns for ever: *Held*, that this was a good appointment of the estate under the power. That the words "and there being a failure of issue of," &c., must be read either parenthetically, or as applying to the time of the death of the survivor of the donee of the power and her husband.

That the construction that the donee might have intended to appoint, or to reserve a power to appoint, to the female descendants of sons, or to give such descendants the chance of taking by descent, would be merely conjectural; and, moreover, was excluded by the express language of the will creating the power, which made no provision for female descendants of male issue, and rebutted by the great age of the donee, who was then without any issue.

That the title of the plaintiff under the appointment, was one which the Court, in a suit for specific performance, would compel the purchaser to take.

A gift to children in tail not comprehending all the issue, followed by a limitation over in terms—"on failure of issue," will generally be read as meaning all such issue as are before-mentioned, unless it appears from the context that other issue than those provided for, were intended to take.

If the question had arisen entirely under the will of the daughter, and the words "there being a failure of issue of," &c., had been found in that will, following limitations to her issue like those contained in the will of 1778, in this case, those words would have been construed to refer to a failure, not of issue generally, but of such issue as the will had previously provided for.

For the purpose of determining the meaning of such a limitation, the principle of construction must be the same, whether the instrument be a deed or a will. *Exo* v. *Exo*, 6 Hare, 171.

Cases cited in the judgment: Bankes v. Holme, 1 Russ. 394, n.; Morse v. Lord Ormonde, 1 Russ. 405; Ellicombe v. Gomperts, 3 Myl. & C. 127; Wright v. Kemp, 3 T. R. 470; Smith v. Earl of Jersey, 3 Bligh, 290; Lytton v. Lytton, 4 Bro. C. C. 441; French v. Caddell, 3 Bro. C. C. 257; Wellington v. Wellington, 4 Bur. 2165; 1 Black 645; Jones v. Morgan, 1 Bro. C. C. 206; Sanford v. Inby, 3 B. & A. 654.

See *Trust*, 1.

RAILWAY, LAND FOR.

Acquiescence.—Mode of ascertaining value or price.—A colliery proprietor constructed a railway from his colliery across the lands of several other persons by agreement, and his solicitor wrote a letter to the defendant, across whose lands he desired to carry the railway, referring to the powers of the local act of parliament, supposed to enable him to take lands within a certain area for road-ways, and offering, on the part of the plaintiff, to pay him for the land at a fair valuation. The defendant did not reply to the letter, and the railway was made across his land without any further communication with him. A year or two afterwards the plaintiff and defendant had an interview, but did not agree as to the price to be paid for the land, and three or four years after the railway was made the defendant brought his ejectment, whereupon the plaintiff filed his bill for an injunction, charging acquiescence. The Court, on motion, restrained the action, upon the plaintiff giving judgment in the ejectment, and paying a sum into Court not less than the amount of the utmost valuation of the land. *Powell* v. *Thomas*, 6 Hare, 300.

REMAINDER-MAN.

See *Apportionment; Vendor and Purchaser*, 3; *Way-Leave*.

SEPARATE USE.

See *Married Woman*.

SETTLEMENT.

Construction.—Wife's future property.—By a marriage settlement the intended husband and wife covenanted that the personal estate to which the wife should at any time or times during her coverture become entitled should be settled upon certain trusts. The trusts of a certain fund therein mentioned were declared to be the same as those declared respecting the future personal estate of the said intended wife. A sum of money to which the lady was absolutely entitled at the time of her marriage was afterwards paid: *Held*, that this money was

not bound by the trusts of the settlement. *Otter* v. *Melvil*, 37 L. O. 71.

SPECIFIC PERFORMANCE.

Misrepresentation.—Sale "without reserve."—A life interest in property was sold by auction "without reserve." The vendors had entered into an agreement with *M.*, that he should bid 32,000*l.* and be the purchaser, unless a higher sum should be bid, and this fact was concealed. The property was sold to the defendant for 50,000*l.* The tenant for life afterwards died: *Held*, that the proceedings were tainted, and that specific performance could not be decreed. *Robinson* v. *Wall*, 10 Beav. 61.

See *Power; Vendor and Purchaser*, 1; *Way-leave.*

SUBSTITUTED CONVEYANCE.

Stats. 1 *W.* 4, *c.* 60. *and* 3 *&* 4 *W.* 4, *c.* 74.—A creditor's suit, to which *M. W.*, a *feme covert*, was a party, was instituted. She was heir-at-law of the intestate whose estate was administered. A decree in the suit was made, directing a sale. A sale was made, and *A. B.* became purchaser. *M. W.* executed the conveyance, but refused to acknowledge. A petition was presented under the Fines and Recoveries Act, 1 W. 4, c. 60, praying that she might be declared a trustee; whereupon the Court directed a reference to the Master to inquire whether she was a trustee, and whether the conveyance executed by her was a proper one to be acknowledged by her; and if not, to approve of a proper conveyance. *Billing* v. *Webb*, 37 L. O. 32.

TENANT FOR LIFE.

Purchase-money.—Cross-suit.—An allegation in the trustee's answer, that part of the purchase-money had been laid out by the tenant for life in the purchase of an estate, of which the plaintiff was in possession: *Held*, not to constitute a ground for directing, by the decree, an inquiry as to the fact, the matter being properly the subject of a cross-suit. *Rees* v. *Williams*, 1 De G. & S. 314.

TENANT IN COMMON.

See *Building on another's Property; Way-leave.*

TENANT IN TAIL.

The rule which allows the first tenant in tail to represent the fee in suits affecting the estate does not apply to heirs of entail under a Scotch deed of tailzie; and, therefore, a decree made in a suit framed upon that principle, for the administration of a fund which in a certain event was liable to be invested in the purchase of land in Scotland to the uses of a Scotch deed of tailzie, was opened at the instance of a subsequent heir of entail under that deed.

How far, and in what cases, the heirs of a Scotch entail are necessary parties to a suit in this Court touching the matters in which they are interested as such heirs of entail, *quære? Fordyce* v. *Bridges*, 2 Phill. 497.

See *Apportionment.*

TITLE DEEDS.

See *Fraudulent Fine.*

TRUST.

1. *Direction to settle.—Power.—Pedigree.*—A testator devised real estates to *J. H.* and *A. L.*, upon trust, immediately upon the happening of either of two events,—*i. e.*, his niece's attaining 25, or marrying,—to settle the same, or such part thereof as the trustees should think proper, to the use of the niece for life, with remainder to the use of her children as she should appoint, and, in default of appointment, to her children, with remainder to the use of *A. L.* and her heirs absolutely: and as to such parts as the trustees should not think fit so to settle (with respect to which the testator gave them absolute discretion,) upon trust to convey the same to *S. L.*, (who was the testator's heir-at-law,) in fee.

In 1831, *J. H.* and *A. L.* proved the testator's will, and accepted its trusts. *J. H.*, shortly afterwards, desired to retire from the trust, and a deed was executed, but not in conformity with the trusts, purporting to appoint *J. O.* a trustee in his stead, but no conveyance was executed to *J. O.* In 1842, *J. H.*, *A. L.*, and *J. O.* executed a deed, purporting to be made in exercise of the power of appointment given by the testator's will to his trustees, and thereby appointed the estate to *A. L.* in fee, *J. H.* executing this deed, on receiving an indemnity from *A. L.* and her solicitor.

Held, that the direction to settle was not a power in the nature of a trust which would prevail if no appointment was made, but was purely discretionary; and that the effect of the original trustees remaining inactive was to leave the beneficial interest to result to *S. L.*, the heir-at-law.

Held, also, that the deed of 1842 was not a proper execution of the power. *Lancashire* v. *Lancashire*, 1 De G. & S. 288.

2. *Stock.—Trustee committing breach of trust.*—A trustee having, under a settlement, a power of sale, with a trust for interim investment in the funds or on real security, concurred in a sale, and permitted the tenant for life to receive the purchase-money, which was not invested according to the trust: *Held*, that the *cestui que trust* has not the option of requiring the trustee to replace the purchase-money with interest, or to buy such a sum of stock as the proceeds of the sale would have purchased, if invested at the time. *Rees* v. *Williams*, 1 De G. & S. 314.

3. *Sale.—Mortgage.*—The common trust for sale of real estates in a deed of settlement authorizes the trustee to raise money by way of mortgage, for the purpose of disencumbering other real estates. *Earl of Orford* v. *Earl of Albemarle*, 36 L. O. 270.

And see *Equity of Redemption; Mortgage*, 2; *Vendor*, 4.

VENDOR AND PURCHASER.

1. *Priority.—Specific performance.*—If a vendor contract with two different persons for

the sale to each of them of the same estate, the Court will, *primâ facie*, enforce the contract which was first made; and if the party with whom the second contract was made should, after notice of the second contract, procure a conveyance of the legal estate in pursuance of the second contract, the Court will, in a suit for specific performance by the first purchaser against the vendor and the second purchaser, decree the latter to convey the estate to the plaintiff. *Potter* v. *Sanders*, 6 Hare, 1.

2. *Return of deposit.*—When the vendor's bill for specific performance is dismissed, on the ground of his laches in instituting the suit, and without any decision on the question of title, the Court will not order the deposit to be returned to the purchaser, but will leave both parties to their legal remedies. *Southcomb* v. *Bishop of Exeter*, 6 Hare, 225.

3. *Railway.—Return of deposit money.—Service of petition.*—Where a petition is presented by a railway company for return of deposit money in completion of the purchase, it is not necessary to serve the vendor with the petition, provided there is a proper affidavit as to the completion of the purchase and the payment of the costs attending it, as directed by the act of parliament. *Exparte the Eastern Counties Railway*, 36 L. O. 284.

4. *Death of vendor without heir, before conveyance.—Trustee.*—A vendor who dies without an heir, and before the conveyance of property agreed by him to be sold, is deemed a trustee within the meaning of 11 Geo. 4, and 1 W. 4, c. 60, and 4 & 5 W. 4, c. 23. *Re Lowe's Estate, In the matter of* 1 *W.* 4, *c.* 60, *and* 4 *&* 5 *W.* 4, *c.* 23, 36 L. O. 389.

WAY-LEAVE.

Remainder-man.—Specific performance.—Tenant for life.—Lessee of way-leaves under a lease granted by a copyhold tenant in fee of the land entered into a negociation for a new lease with the tenant for life under the lessor's will, which gave the tenant for life the power of leasing. A correspondence ensued, in the course of which the tenant for life offered to grant a new lease at a certain rent, which offer was accepted by the lessees. The original lease contained a clause usual, if not universal, in the leases in the neighbourhood, giving the lessees the option of determining the lease on notice. The correspondence respecting the new lease was silent as to the insertion of such a clause, but one of the earliest letters alluded to the proposed lease as a renewal of the former: *Held*, 1st, that the lessees might have understood that such a clause was intended to be inserted in the new lease, without putting a perverse or absurd construction on the correspondence, and that, whether such understanding was correct or incorrect, or was confined or not confined to the lessees, they ought not to be ordered to accept the lease without such a clause; 2ndly, that the tenant for life had not, under the will or otherwise, power to grant such a lease, and that the reversioner, though able to fulfil the agreement, was not entitled to demand a specific performance of it. *Ricketts* v. *Bell*, 1 De G. & S. 335.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

Lord Chancellor.

After Michaelmas Term, 1848.

AT LINCOLN'S INN.

Saturday	Dec. 2	(The 1st Seal) Appeal Motions.
Monday	4	Appeals.
Tuesday	5	
Wednesday	6	
Thursday	7	
Friday	8	(Petition-day) unopposed Petitions and Appeals.
Saturday	9	The 2nd Seal—Appeal Motions and Appeals.
Monday	11	Appeals.
Tuesday	12	
Wednesday	13	
Thursday	14	
Friday	15	(Petition-day) unopposed Petitions and Appeals.
Saturday	16	The 3rd Seal—Appeal Motions and Appeals.
Monday	18	Appeals.
Tuesday	19	
Wednesday	20	
Thursday	21	The 4th Seal—Appeal Motions and Appeals.
Friday	22	The General Petition-day.

Master of the Rolls.

See p. 97, *ante*.

Vice-Chancellor of England.

AT LINCOLN'S INN.

Saturday	Dec. 2	The 1st Seal—Motions.
Monday	4	Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday	5	
Wednesday	6	
Thursday	7	
Friday	8	(Petition-day) Petitions, (unopposed first,) Short Causes and Causes.
Saturday	9	The 2nd Seal—Motions.
Monday	11	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	12	
Wednesday	13	
Thursday	14	
Friday	15	(Petition-day) Petitions (unopposed first,) Short Causes, and Causes.

Saturday . . . 16 The 3rd Seal—Motions.
Monday . . . 18 } Pleas, Demurrers, Excep-
Tuesday . . . 19 } tions, Causes, and Fur-
Wednesday . . 20 } ther Directions.
Thursday . . . 21 The 4th Seal—Motions.
Friday . . . . 22 { (General Petition-day,)—Short Causes & Petitions.

Vice-Chancellor Knight Bruce.

AT LINCOLN'S INN.

Saturday . Dec. 2 The 1st Seal—Motions.
Monday . . . 4 Bankrupt Petitions.
Tuesday . . . 5 { Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . 6 { Bankrupt Petitions and Ditto.
Thursday . . . 7 { Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . . 8 { (Petition-day) Petitions Short Causes and Causes.
Saturday . . . 9 The 2d Seal—Motions.
Monday . . . 11 Bankrupt Petitions.
Tuesday . . . 12 { Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . 13 { Bankrupt Petitions and Ditto.
Thursday . . 14 { Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . . 15 { (Petition-day) Petitions, Short Causes, & Causes.
Saturday . . . 16 The 3rd Seal—Motions.
Monday . . . 18 Bankrupt Petitions.
Tuesday . . . 19 { Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . 20 { Bankrupt Petitions and Ditto.
Thursday . . . 21 The 4th Seal—Motions.
Friday . . . . 22 { (General Petition-day,) Petitions, Short Causes and Causes.

Vice-Chancellor Wigram.

AT LINCOLN'S INN.

Saturday . Dec. 2 { The 1st Seal—Motions and Causes.
Monday . . . 4 } Pleas, Demurrers, Excep-
Tuesday . . . 5 } tions, Causes, and Fur-
Wednesday . . 6 } ther Directions.
Thursday . . . 7 }
Friday . . . . 8 { (Petition-day) Short Causes, Petitions, (unopp^{d}. first) and Causes.
Saturday . . . 9 { The 2nd Seal—Motions and Causes.
Monday . . . 11 } Pleas, Demurrers, Excep-
Tuesday . . . 12 } tions, Causes, and Fur-
Wednesday . . 13 } ther Directions.
Thursday . . . 14 }
Friday . . . . 15 { (Petition-day) Short Causes, Petitions, (unopp^{d}. first,) and Causes.
Saturday . . . 16 { The 3rd Seal—Motions and Causes.
Monday . . . 18 } Pleas, Demurrers, Excep-
Tuesday . . . 19 } tions, Causes, and Fur-
Wednesday . . 20 } ther Directions.
Thursday . . . 21 { The 4th Seal — Motions and Causes.
Friday . . . . 22 { (General Petition-day) Petitions, Short Causes and Causes,

CHANCERY CAUSE LISTS.

Lord Chancellor.

After Michaelmas Term, 1848.

APPEALS.

S. O.	Hodgkinson, Ditto	Hodgkinson, Jackson	appeal
Hil. T.	Allfrey	Allfrey,	ditto
	Attorney-Gen., Ditto	Wilson, Ditto	ditto
To fix a day,	Davis	Chanter, 9 causes	ditto
	Stewart	Forbes	ditto
S. O.	Cochrane, Lord	Cochrane, Colvin	ditto
To fix a day,	The Mayor, &c., Rochester	Lee, ditto and motion	
	Mosley	Baker	appeal
Hil. T.,	Attorney-General	Wilson	ditto
	Woods	Woods, ditto part heard	
	Beech	Ford	appeal
	North	Morley	ditto
	East Lancashire Rail. Co.	London and North West Rail. Co.	appeal
	Vulliamy	Vulliamy	ditto
	Ashurst, Mill	Mill, Ashurst	ditto
	Attorney-General	Mayor, &c., of Chester	ditto
	Potter	Waller	ditto
	Rheam	Smith	ditto
	Jackson	North Wales Rail Co.	ditto
	Granville	Betts	ditto
	Richardson	Corbett	ditto

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

To fix a day, Dobson *v.* Lyall, fur. dirs. and costs.
Robinson *v.* Sollory,
S. O., Ashburner *v.* Wilson, fur. dirs. and costs.
Attorney-General *v.* Earl of Stamford, fur. dirs. and petn.
Dunston *v.* Dunston, 3 causes, fur. dirs.
Boycott *v.* Morse, 2 causes.
Digby *v.* Boycott, 3 causes.
S. O., Cunningham *v.* Antrobus.
S. O., Marshall *v.* Carter.
S. O., Edge *v.* Duke. 2 causes.
Thorneycroft *v.* Crockett, exons.
Bodington *v.* Great Western Railway Company.
Bell *v.* Bell.
S. O., Gregory v. Wilson.
Willis *v.* Jones, fur. dirs. and costs.
S. O., Myers *v.* Perigal, ditto

Coleman *v.* Mellersh.
Robinson *v.* Williams.
Thornton *v.* Knight.
Dykes *v.* Taylor, exons.
Drever *v.* Maudsley, 7 causes, fur. dirs.
S. O., Simkins *v.* Webb.
Smith *v.* Pincombe, 2 causes.
Glover otherwise Gordon *v.* Hall.
Chipchase *v.* Simpson.
Elkington *v.* Aplen, 2 causes.
Holloway *v.* Collier.
Chambre *v.* Flight.
Jaquet *v.* King.
Walter *v.* Corpe.
Duff *v.* Chester.
Worsley *v.* Woodford.
Boothby *v.* Boothby.
Jones *v.* Francis, fur. dirs. and costs.
Moorley *v.* Smith.
Miller *v.* Priddon.
Attorney-General *v.* Finch, 2 causes.
Surtees *v.* Hopkinson. fur. dirs. and costs.
James *v.* Jones.
Alt *v.* Gregory.
Dudley *v.* Burrage.
Field *v.* Jennings.
Short, Wright *v.* Howe.
Watts *v.* Symes, 2 causes.
18*th Dec.*, Ladbrooke *v.* Smith.
18*th Dec.*, { Tomlinson *v.* Troughton / Haydock *v.* Tomlinson. }
Marks *v.* Solomons, fur. dirs. and costs.
Baxter *v.* Abbott, 3 causes and ditto.
11*th Jan.*, Baker *v.* Salmon.
Shelton *v.* Watson, fur. dirs. and costs.
Short, Dovey *v.* Longlin, 2 causes.
Rowland *v.* Witherden.
Skey *v.* Garlick, 4 causes, fur. dirs. and costs.
Earl of Balcarras *v.* Hudson.
Ligoure *v.* Marryatt, fur. dirs. and costs.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

M'Intosh *v.* Great Western Railway Company, 3 dems.
Pierson *v.* Barclay, defi's. objn. as to parties.
Howard *v.* Flower, ditto.
Barton *v.* Haynes, cause and petn., by order.
S. O., Weighman *v.* Powell.
Hilary Term, { Kent *v.* Underhill. / Capper *v.* Ditto. }
Townsend *v.* White.
S. O. G., Grayson *v.* Deakin, fur. dirs. and costs.
Attorney-General *v.* Harvey, ditto.
Fowler *v.* Reynal.
Stephens *v.* Richards.
Hilary Term, Stanley *v.* Bulkeley.
{ Coward *v.* Coward, exons. / Ditto *v.* Ditto, fur. dirs., pt. hd.
Pothecary *v.* Pothecary.
Spackman *v.* Homfrey.
Wilkinson *v.* Candlish.
{ Milne *v.* Baldwin. / Ditto *v.* Green. }
{ Stronger *v.* Hawkes. / Hawkes *v.* Ditto. }
Douglas *v.* Crewdson.
Davies *v.* Davies, 2 causes.
Cook *v.* Wright.
Madeley *v.* Booth.
Paterson *v.* Mills.
Pfeiter *v.* Bain.
Attorney-General *v.* Haywood.
Bull *v.* Falkner, exons.
Hirst *v.* Hutchinson.
Alexander *v.* Bushby, fur. dirs. and petn.
Dawson *v.* Robinson.
Davies *v.* Corporation of Ludlow.
Cowan *v.* Hymers.
Aglionby *v.* James, fur. dirs.
11*th Dec.*, Musters *v.* Wright.
12*th Dec.*, Wildes *v.* Clifton.
Bycroft *v.* Horton, fur. dirs. and costs.
Dixon *v.* Levin, 3 causes and ditto.
Cutts *v.* Riddell.
Hughes *v.* Scarborough.
Gardom *v.* Williams.
Ackers *v.* Williams.
Foligno *v.* Goldner.
Barraclough *v.* Hull.
Nunn *v.* Truscott.
Toller *v.* Attwood.
Austin *v.* Salter.
Peters *v.* Halliday, fur. dirs. and costs.
Short, Boydell *v.* Barker, ditto.
Sharp *v.* Giblett.
Fowell *v.* Dodson, 2 causes.
Howard *v.* Carr.
Dobinson *v.* Sliddall, fur. dirs. and costs.
Browne *v.* Milne, ditto.
Brown *v.* Mundy.
Morehouse *v.* Newton, exons.
Savery *v.* Savery.

Vice-Chancellor Wigram.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Last day of Tr. T., Chandler *v.* Corke.
{ Thornton *v.* Portsmouth and Arundel Navigation Company. / Ditto *v.* Hope. }
Cormick *v.* Pearce, fur. dirs. and petn.
Trin. T., Nesfield *v.* White.
Watson *v.* Masters, exons.
White *v.* Crisp,
Hayward *v.* White.
Hill *v.* Kellaway.
Webster *v.* Bray.
Trappes *v.* Roskell, 2 causes.
Rushin *v.* Fairbrother.
Beattie *v.* Johnstone.
{ Milne *v.* Loe, / Addinsell *v.* ditto, } fur. dirs. and petition.
M'Griger *v.* The Derbyshire Grand Junction Railway Company.
Baron *v.* Baron.
Phillips *v.* Rogers.
8*th Dec.*, { Vere *v.* Wilson. / Smith *v.* Ditto, }
9*th Dec.*, Jones *v.* How.
14*th Dec.*, Fleming *v.* Weare.
{ Smith *v.* Palmer, / Ditto *v.* Ainstre, / Ditto *v.* Palmer, } fur. dirs. and petn.
{ Gaskell *v.* Holmes, 5 causes, fur. dirs. / Ditto *v.* Ditto, 2 causes. }
16*th Dec.*, Jennings *v.* Edwards.
Baines *v.* Logan.
Short, Porter *v.* Allen.
Maugham *v.* Maugham, 3 causes, fur. dirs. and costs.
Kennedy *v.* Blair, fur. dirs. and costs.
Short, Bensusan *v.* Nehemeas.
Short, Squire *v.* Warre.
{ Ranken *v.* Harwood, / Ditto *v.* Boulton, } fur. dirs. and costs.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 16, 1848.

"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

THE POOR LAWS AND THEIR ADMINISTRATION.

We are not surprised to find the government have not yet selected any person to fill the office of President of the Board of Poor Law Commissioners in the place of the late lamented Mr. Charles Buller.* It requires a combination of qualities at once useful and remarkable, to render the discharge of the duties of such an office satisfactory to the possessor or beneficial to the public. It is only necessary to remember, that the old Poor Law Commissioners—who we doubt not were able as well as honourable men—effectually contrived to divest themselves of the confidence of the government and the respect of the public,—to teach us how different and delicate a matter it is to administer this branch of the law with a judicious regard to the wishes and wants of the community. If the varied and extensive knowledge, business-like habits, urbanity of manner, and kindliness of disposition, which distinguished the late president should fall to the share of his successor, Lord John Russell will have good reason to congratulate himself upon the selection. But rare and estimable as are these qualities in the possessor of such an office, they will be found insufficient for the exigencies of the occasion, unless the President of the Poor Law Board takes a statesmanlike and comprehensive view of the subject, and resolutely determines to grapple with the difficulties it presents, and unless he is aided by the cordial support of the government, and fortified by the confidence of the public. It may be desirable, but it does not appear to us to be necessary, that the head of the Poor Law Department should be a member of either House of Parliament. The act appointing the New Commissioners, (10 & 11 Vict. c. 109, s. 9,) merely declares:—

"That the office of president shall not be deemed such an office as shall render the person holding such office incapable of being elected, or of sitting or voting as a member of the Commons House of Parliament, or as shall avoid his election if returned, or render him liable to any penalty for sitting or voting in parliament; and that one only of the said secretaries shall, at the same time, be capable of sitting and voting in the Commons House of Parliament."

Either president or secretary, therefore, *may*, but it is not necessary that either should, sit in the House of Commons; and it would seem to be more advantageous to the public service that, in the choice of such an officer, the field of selection should not be restricted to the adherents of government having seats in parliament.

As the Poor Laws must necessarily be administered by persons of various degrees of intelligence, and who, for the most part, have not had the advantages of a professional education, it seems, above all things, desirable that the statutory provisions they are required to carry into operation should be clear and simple. There is no branch of our law, however, more complicated, confused, and obscure, than that relating to the relief of the poor. We do not complain of

* Lord Seymour, the eldest son of the Duke of Somerset, was said to have been appointed to the office, but the rumour has been authoritatively contradicted.

the deficiency of legislation on this subject, but of the multiplication of statutes, containing inconsistent and unintelligible enactments, which mislead, rather than assist, those practically entrusted with the administration of the law. For a single and a signal example of statutory obscurity, we need only refer to the first section of the Poor Removal Act, 9 & 10 Vict. c. 66, which received a judicial construction in the Court of Queen's Bench, on the last day of Michaelmas Term, directly in contradiction to an opinion given by Sir John Jervis, and Sir David Dundas, as Attorney and Solicitor General, shortly after the act came into operation.[a] Most of our readers are, no doubt, aware that, by that section, a perfectly novel principle, of extensive applicability, was imported into the system of Poor Law administration. It was enacted,—"that after the passing of this act, no person shall be removed, nor shall any warrant be granted for the removal of any person from any parish in which such person *shall have* resided for five years next before the application of such warrant." Under this provision, by a residence for five years, a privilege of irremoveability was conferred, wholly independent of, and unconnected with, any right of settlement. The operation of this enactment was restricted, however, by two provisoes, framed in such a manner as to have created considerable doubt and difficulty in the minds of every person who has given attention to the subject.[b] The provisoes added to the enactment above-quoted are as follow :—

"Provided always, that the time during which such person shall be a prisoner in a prison, or shall be serving her Majesty as a soldier, marine, or sailor, or reside as an inpensioner in Greenwich or Chelsea Hospitals, or shall be confined in a lunatic asylum, or house duly licensed, or hospital registered for the reception of lunatics, or as a patient in a hospital, or during which any such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bond fide* charitable gift, *shall* for all purposes be excluded in the computation of time hereinbefore-mentioned, and that the removal of a pauper lunatic to a lunatic asylum, under the provisions of any act relating to the maintenance and care of pauper lunatics, shall not be deemed a removal within the meaning of this act: Provided always, that whenever any person shall have a wife or children having no other settlement than his or her own, such wife or children shall be removable whenever he or she is removable, and shall not be removable when he or she is not removable."

Some of the facts or circumstances described in the first proviso, are of such common and ordinary occurrence, as to be applicable to a large proportion of the class of persons requiring parochial relief and falling within the scope of the enacting clause. It therefore became a matter of the utmost importance to the parochial authorities to ascertain, with the least possible delay, the effect of this section, in order that they might determine when the law authorized, and when it prohibited, the removal of parties becoming chargeable. The first and gravest of the doubts suggested was, whether any part of the section was retrospective, and supposing the enacting clause operated retrospectively, whether the proviso had also a retrospective operation. The Attorney and Solicitor General, at the instance of the late Poor Law Board, as already stated, permitted their names to be used as authority for the construction that, although the enacting clause was retrospective in its operation, the exceptive provision was merely prospective. This construction, which was unquestionably contrary to the intention of the legislature, produced great dissatisfaction, and even consternation, in parishes in which a large number of persons avowedly settled in, and receiving relief from, other parishes, found it convenient to reside. In certain localities the burthens of the rate-paying inhabitants were suddenly and materially augmented by the alteration of the law as expounded by the first law officers of the Crown. Arrangements of a permanent nature were made,

[a] As the opinion of the then Attorney and Solicitor General, industriously circulated by the old Poor-law Commissioners, towards the close of 1846, has been erroneously, though no doubt inadvertently, attributed to Sir Frederick Thesiger and Sir Fitzroy Kelly, it is but right to state that the Poor Removal Act did not obtain the Royal Assent, until the 26th August, 1846, and that on the 3rd of July in that year, Sir Thomas Wilde was appointed Attorney-General, and Sir John Jervis Solicitor-General; and on the 7th July, in consequence of the promotion of Sir Thomas Wilde to the office of Lord Chief Justice of the Common Pleas, Sir John Jervis was appointed Attorney-General, and Sir D. Dundas, Solicitor-General.

[b] The Act was introduced by the Peel Administration, although it did not receive the Royal Assent until after Sir Robert Peel retired from office. The law officers of his government, therefore, are justly chargeable with their share of the discredit falling upon those who are parties to this specimen of careless and clumsy legislation, although they were not parties to the opinion above alluded to.

reference to the supposed alteration, and now it turns out, after the act has been somewhat more than two years in operation, that the Court of Queen's Bench—the only judicial tribunal, besides the Quarter Sessions, having jurisdiction in settlement cases—is totally at variance with Sir John Jervis and Sir David Dundas, in their construction of this part of the statute. The Court of Queen's Bench has determined,[c] in conformity with the obvious intention of the legislature, that the proviso should operate retrospectively as well as prospectively. In other words, that the proviso should apply to the same time to which the enacting clause applies; and if it appears that a pauper has resided *for five years next before the passing* of the act in a parish in which he has acquired no settlement, he may be removed, if, during any portion of the five years, he has been imprisoned, or has received parochial relief. Those falling within the examples contained in the exceptive proviso, are to be excluded from the benefit of the computation directed by the enacting clause, and by this construction the operation of the enacting clause will be confined and limited in apparent accordance with the meaning of those who framed the provision.

We have already had occasion to direct attention to the difficulties which have arisen upon the terms of the last proviso to the first section of the Poor Removal Act, as above cited, and to the blundering attempt to repeal and amend it[d] by an act of the Session of 1848, (the 11 & 12 Vict. c. 111). The supposed effect of this proviso was, that where a wife or children came, unaccompanied by the husband or father, to reside in a parish in which they had no legal settlement, the wife and children could not be removed, because the husband or father had not become removable from the parish by coming to inhabit in it. The Court of Queen's Bench, in a very recent case,[e] has put a rational construction upon this provision, by deciding, that irremovable means not removable by law, and that the wife or children may be removed where the husband or father has not subjected himself by his personal presence to be removed, but where he could be properly and legally removed if he had accompanied his wife and children.

These recent decisions, it may be admitted, are clear and satisfactory so far as they go; but how much litigation, dissatisfaction, and injustice would have been prevented, if the section were framed, as it easily might have been, in a manner to avoid raising such questions; or if, when first the difficulty presented itself, it could have been authoritatively and definitively settled! The instances adverted to form a very inconsiderable portion of those which may be enumerated, where ambiguities and obscurities of expression have marred the efforts of those who were desirous to administer the Laws relating to the Relief of the Poor in a liberal and enlightened spirit. It is not looking for what is impossible or unreasonable to say, that this might have been prevented. Let us hope that the control of a department—exercising such a constant and immediate influence over the well-being of the community,—will be entrusted to one, who unites with ability and energy an adequate appreciation of the importance of the duties that will necessarily devolve upon him, and a firm determination to effect those amendments in this branch of the law, without which the public cannot, nor should be satisfied.

[c] *Regina* v. *The Inhabitants of Christ Church, Surrey*, Notes of Cases in Michaelmas Term, *post*, p. 131.

[d] See Leg. Obs. vol. 36, p. 519.

[e] *Reg.* v. *The Inhabitants of St. Ebbes, Oxford*, *ante*, p. 93.

THE RESPECTIVE PROVINCES OF THE BAR AND THE ATTORNEYS.

In reference to the recent questions which have been raised on the right of attorneys to appear as advocates before the Court of Bankruptcy, before justices of the peace, and in the Registration Courts, it may not be inappropriate briefly to advert to the ancient rights or privileges of attorneys (or rather of their Clients), before resuming the subject which has been mooted in the Law Review, noticed at p. 83, *ante*. There is no doubt that prior to the time when attorneys were allowed to appear on behalf of their clients, the parties attended the Courts in person, and that attorneys were only permitted for special causes assigned, such as infirmity, age, and inability to travel. But the appointment of attorneys in civil cases is of great antiquity. They are mentioned so early as the Statute of Merton, in the year 1325. In the Court of Common Pleas, the only practitioners anciently recognised in that Court were serjeants-at-law, and attorneys-at-law; and serjeants as well as attorneys have been from time

immemorial, privileged from arrest as officers of the Court.

The serjeants and attorneys appear to have been the only persons admitted and qualified to practise in Court; the former seem to have been anciently admitted into the degree of the *coif*, as at present; and attorneys were, until recently, admitted by the judges, and sworn in their official gowns on the floor of the Court.* The records of the Courts sufficiently prove the early origin and authority of attorneys. They are named in every record, and the old rolls contain the warrant of appointment of the attorney, and state that "*A. B.* puts in his place *C. D.*, his attorney; and that the said *A. B.*, by *C. D.*, his attorney, comes and defends the wrong and injury," &c.

Now, it may be asked, what does this mean, if attorneys were not permitted to address the Court on behalf of their clients? The ancient law which allowed the appointment of attorneys intended to confer a benefit; but here the client, instead of being in a better, would be in a worse condition by appointing an attorney; inasmuch as if he appeared in person he could plead his own cause; and the Courts were bound to hear him, and still occasionally do hear parties who appear in person. It seems, that anciently the attorneys not only conducted the case in its progress to trial, but acted in Court as advocates; that they read the pleadings, managed the evidence, and urged whatever they might think proper for the advantage of their clients.

It is unnecessary now to contend that this ancient right—not so much of the attorney as *of the client*—still continues in Westminster Hall, because by common consent in modern times, the Courts, in the exercise of their power of regulating their own practice, have decided on hearing barristers only, though there are several instances in which they have heard attorneys. It may be admitted, that before the Courts sitting in Banc, or at Nisi Prius, or at the Assizes, it is convenient and beneficial as well for the public as for both branches of the profession, that the present division of labour between barristers and attorneys should continue. At all the larger Quarter Sessions the same regulation seems properly to prevail.

But the question of the advocacy of attorneys in the *inferior* Courts is one which more deeply concerns the *suitors* than the practitioners, though it is not without interest to a considerable part of the profession. We are told, indeed, that the majority of the attorneys prefer the arrangement by which, in all cases, whether in Court or before Magistrates or Commissioners, the attorney should prepare the case *out* of Court and the barrister conduct it *in* Court. This may be so. But we still contend that where the client is satisfied with, or prefers the services of, the attorney, he should be at liberty to employ him in conducting the whole case from first to last.

We have adverted thus much to the general question of advocacy by attorneys, because the writer "on the Province of the Bar," in the Law Review, tells us "that it will hardly be contended, that independent of an express statute, an attorney or solicitor is in any way legally invested with the character of advocate."

This, with submission, appears to be an extraordinary claim of superior authority in behalf of the members of the Inns of Court, for certainly by no *statute* or legislative ordinance are the Benchers of the Inns of Court *invested* with the power of creating advocates, whilst the order of attorneys is clearly recognised by legislative enactment long before the establishment of those learned societies. The practical question, mayor not, in these days, be decided like the *serjeant's case*, wherein it will be recollected, that at first the ancient *exclusive* practice was set aside by an assumed power, and when brought to the test of legal authority restored, but finally, for the public good, abolished and the Court thrown open. We doubt not that the love of justice, which so strongly prevails in this country, will set the present matter upon its right footing.

We had thought that the very circumscribed limits of the Attorney-Advocate—confined at present to the Bankruptcy Courts, the Registration Courts, and the County Courts—would not have excited the jealousy of the Bar,—especially as their members are in possession of many professional posts to which the attorneys seem justly and legally entitled. The attorneys, it will be recollected, were formerly appointed to the office of Commissioners in Bankruptcy both in town and country. We recollect that amongst the fourteen lists in London of five commissioners each ("the septuagint," as Lord Brougham termed them), some eminent Solicitor in each was always found—(oft-times it might be the

* It is sufficient now to sign the roll without taking any oath, provided the applicant be previously sworn in before one of the other Superior Courts.

nephew of a person in authority); and generally the practical skill of those "gentlemen" was not useless to the other commissioners. Those days are gone by. No attorneys or solicitors can be commissioners. They may be registrars, but not exclusively so. And now, forsooth, we are told they must not act the part of *quasi* advocates before those tribunals in which, a few years ago, they sat in the chief seats.

To the argument we ventured to offer in the number before last on this subject (p. 83), we have received the following answer :—

RIGHT OF SOLICITORS TO ACT AS ADVOCATES IN THE BANKRUPTCY COURT.

Sir,—In the notice contained in the number of the *Legal Observer* (for the 2d December,) of the article on the "Province of the Bar," in the *Law Review*, the opinion that solicitors are not *stricto jure* invested with the character of advocates, even in the Bankruptcy Courts, is combated with some degree of confidence, and the subject dismissed with the observation, that "the learned editor of the *Law Review* appears to have permitted some correspondent or contributor to descant on a subject for which he seems not sufficiently to have prepared himself."

The subject is of too much importance to the profession to be thus dismissed; and temperate argument, supported by legal authorities, alone must show which of the two writers really proves "sufficiently to have prepared himself for it."

The article on the "Province of the Bar" is by no means written in a spirit hostile to attorneys and solicitors as a class. The odious argument *ad homines* is carefully avoided, and the views propounded are equally aimed at the case of men of the highest qualifications in the very distinct vocations of Advocate and Attorney, as at the case of the most careless and inefficient of those who are legally entitled to practise under the title of "counsel learned in law," or "gentleman one, &c." Whatever may be the personal qualifications of the various practitioners, it will be found that the article in question for the most part accords with a very old, well-recognized, and very salutary principle of our juridical institutions, "that no connexion should exist between the two branches of the profession which would be likely to lead to malpractice in either;"[h] and the object aimed at in the *Law Review* is to prevent, on the one hand, either the barrister encroaching on the vocation of the solicitor,[i] or parties on the roll of attorneys exceeding their legitimate province, and acting the part of the barrister. The legitimate transition from the one vocation to the other is not objected to, but the practising both at one time, like the Continental *avocats*, to whom, as a class, the two branches of the legal profession in England are both unquestionably superior. It must indeed be conceded, that solicitors in extensive practice have, generally speaking, little leisure and little desire to play the advocate in their own cases, and decidedly not to conduct as advocate the cases of other solicitors. This only as to the general question *principle* involved in the discussion.

Now for the particular case of the *Bankruptcy Court*. It will hardly be contended, that independent of an express statute, an attorney or solicitor is in any way legally invested with the character of advocate. Their services in that capacity, when regularly retained, are often allowed, and in fact hardly ever refused, where the employment of counsel would be impracticable; but wherever this has been insisted on as a professional right, it has been successfully defeated.[k] In the case of the Bankruptcy Court an express provision was made with regard to solicitors in these words: "Be it enacted, that all attorneys and solicitors of any of the Superior Courts of Law or Equity at Westminster may be admitted, and have their names enrolled in the said Court of Bankruptcy, without any fee or charge, other than such as shall be allowed by this act or any rule or regulation to be made in pursuance thereof, and *may appear and plead in any proceedings in the said Court without being required to employ counsel*; (except in proceedings before the said Court of Review, and upon the trial of issues by jury;) and in case any person, not being an attorney or solicitor duly admitted as aforesaid, shall *practise* in the said Court of Bankruptcy," &c.[l]

The 6 & 7 Vict. c. 73, reciting that "the laws relating to attorneys and solicitors are numerous and complicated, and it is expedient to consolidate, and simplify, and to alter and amend the same," repeals various ACTS and *parts of acts* set forth in the first schedule, and saves various acts and parts of acts mentioned in the second schedule. In the first schedule, the 1 & 2 W. 4, c. 56, is named, and the portion declared to be repealed is "so much as relates to the *admission and practising* of attorneys and solicitors in the said Courts." The second schedule saves the whole except this portion.

Now it is contended, that though the above provision as to solicitors practising in Bankruptcy, is contained in one isolated section, (the 1 & 2 W. 4, c. 56, s. 10,) and the 6 & 7 Vict. c. 73 wholly repeals so much of this act as relates to solicitors' admission and practising, yet that portion of the section is preserved which allows them *to appear and plead*; that a

[h] Observations of Lord Denman *in re Bateman*, 6 Queen's Bench Reports, 853.

[i] [What does our correspondent say to barristers holding the office of *solicitors* to government boards, stewardships to noblemen and gentlemen, and many other offices? Are these the proper functions of advocates?—ED. L.O.]

[k] See, *inter alia*, *Rex* v. *Borron*, 3 B. & Ald. 438.

[l] 1 & 2 W. 4, c. 56, s. 10.

line and a half in the midst of the section are saved, whilst every syllable besides is repealed.

Now it will be seen, from the portion of the section already quoted, that the legislature itself included the *appearing* and *pleading* under the term *practising*. If it did not, *any person* might *appear* and *plead*, solicitor or not, for the penalty is only imposed on *practising*, and unless the 27th section of the 6 & 7 Vict. c. 73, the repealing act, has the effect of reviving the right to appear and plead, it was wholly unnecessary to quote it; but that section is wholly silent on this subject. It merely gives the right to practise *as a solicitor* in like manner as if *sworn in and admitted*. This does not even refer to the Bankruptcy Court, for *there was no swearing in previously required*.[m] It obviously refers to Inferior Courts, much less does it refer to *pleading* in any Court, for that, as already observed, does not, by the general rules of law, come within the department of an attorney or solicitor.

My letter, I fear, is somewhat longer than correspondents' communications usually are. The subject is, however, of great professional interest, and I wished to show that the article which has given rise to the discussion, was not written so hastily as it has been supposed. There are other portions of that article which may possibly excite discussion, (and the more perhaps the better,) but I feel some degree of satisfaction at the thought that no suggestion which it contains is calculated to injure any class of practitioners, but that its grand object is to elevate the profession, and adjust points which the improved system of education in both branches of the law, renders it extremely desirable to settle. Prevent the barrister, the irregular practitioner, or unqualified person, from usurping the province of the attorney or solicitor, but with the same sense of justice prevent the latter from invading the legitimate

PROVINCE OF THE BAR.

The argument of the learned gentlemen against the right of attorneys to appear and plead in bankruptcy, rests, we conceive, mainly on the erroneous assumption regarding the mode of admission, viz., that "*there was no swearing in previously* required" in the Bankruptcy Court. Now we well remember when the Court of Review was opened, (for want of a better,) in the Sale-room of the Masters in Chancery, in Southampton Buildings, and the attorneys and solicitors who required to be enrolled in bankruptcy, were sworn in open Court before the four judges, by Mr. Barber, the registrar, and from thence proceeded to the Court of Bankruptcy in Basinghall-street, where Mr. Serjeant Lawes, the other registrar, very courteously received them, and in his presence they signed the roll and from him received the memorial of admission.[f]

It will be recollected also, that when, not long before the establishment of the Court of Bankruptcy, the Court of Exchequer was thrown open to all attorneys of the other courts and the side clerks abolished, the attorneys were also there sworn in open Court, as they were in the Common Pleas.

It is palpably one of the objects of the act to abolish the repetition of these "swearings in," and to make one oath in Chancery and one at common law sufficient for all the Courts, superior and inferior. In order that our readers may judge for themselves on the question at issue, we shall lay before them the 10th section of the 1 & 2 Wm. 4, c. 56, and then the words in which its repeal is supposed to be affected.

The 1 & 2 Wm, 4, c. 56, s. 10, enacts, "that all attorneys and solicitors of any of the Superior Courts of Law or Equity at Westminminster, may be *admitted and have their names enrolled* in the said Court of Bankruptcy, without any fee or charge other than such as shall be allowed by this act, or any rule or regulation to be made in pursuance thereof, and may *appear and plead* in any proceedings in the said Court, without being required to employ counsel, (*except* in proceedings before the said *Court of Review*, and upon the trial of *issues by jury*;) and in case any person, not being an attorney or solicitor duly admitted as aforesaid, shall *practise* in the said Court of Bankruptcy as an attorney or solicitor, he shall be deemed guilty of a contempt of the said Court, and be liable to the penalties incident thereto, on complaint thereof made to the Court of Review; and that all the laws and statutes now in force concerning attorneys and solicitors shall extend to attorneys and solicitors practising in the said Court of Bankruptcy."

Then the words of repeal in the schedule to the 6 & 7 Vict. c. 73, are "*so much*" of the 1 & 2 Wm. 4, c. 56, "*as relates to the admission and practising of attorneys and solicitors in the said Courts*" [of Bankruptcy]. These words we contend have the

[m] [Our correspondent is quite mistaken in this important fact. Attorneys and solicitors *were* required to be sworn in before they were enrolled in the Bankruptcy Court.—Ed. L. O.]

[f] The following is a copy of the Form of Admission:—"In the Court of Bankruptcy. It appearing to this Court, that A. B., of &c., is duly qualified to act as an attorney and solicitor of this Court, and he *having this day been sworn* accordingly, This Court doth hereby admit him an attorney and solicitor thereof, and order his name to be enrolled as such by the proper officers. Dated, &c. By order of the Court of Review (L. S.) Enrolled the same day, E. L."

effect only of repealing the mode of admission by abolishing the "swearing in," and leave unrepealed the rest of the 10th section, as above set forth, namely,—the right of "appearing and pleading in any proceedings in the said Court, without being compelled to employ counsel, except in the Court of Review, and upon the trial of issues by a jury." The 27th section of 6 & 7 Vict., c. 73, provides, in lieu of the former mode of *admission* and *enrolment*, for an admission by signing the roll. It is clear that having so signed the roll, the attorney may then "appear and plead," according to the Bankruptcy Court Act, 1 & 2 Wm. 4, c. 56, s. 10.

Throughout the long period which has elapsed since the establishment of this work, it has been our careful object to promote the advancement of the profession as a whole:—to view all proposed improvements of each department with reference to the entire body; but we think there are clear indications in the majority of the legal press, to take what to them may seem the stronger side,—that of the Bar. To those whose business, duty, or interest it may be to watch the progress of the profession, it appears evident that certain powers are now at work to lower the second branch of the profession, and unduly to raise the first. Feeling assured that this course is fraught with injury, not only to that department which is sought to be over-ridden, but to the class immediately above it, and to the entire profession and the public,—we must, with such means as we possess, set ourselves against it.

The attorneys take their stand upon their welfare being identical with the right administration of justice, and the true and substantial interests of the public. They urge that the vast majority of human transactions, (involving indeed ninety-nine cases out of every hundred,) requires the application of an intelligent legal mind, much experience in the affairs of society, careful weighing of circumstances, and above all, strict integrity and honourable conduct. They say that amongst the disputes and arrangements which agitate the great mass of the public, whose interests require legal investigation or interference, not one in five hundred requires for its adjustment the eloquence of the Bar.

It has, perhaps, never occurred to the ready writers who have lately entered the lists, to calculate the quantity and extent of legal transactions which come under the care and attention of the *ten thousand* attorneys and solicitors of England and Wales. We venture to say, that the property comprehended within the province of the Courts of Justice, or in any respect dependent on the decisions to which those Courts may come, is not of the value of one in a hundred compared with the matters entirely entrusted to attorneys and solicitors, and by them settled without forensic assistance. We state this from a firm conviction deduced from very extensive means of information, and from no inclination to overstate the case of those whom we peculiarly consider our clients. If there should be any doubt on the subject, we will undertake to prove it by a Parliamentary return in the next Session of Parliament.

Besides all other points, it is very important in the controversy upon which we are entering, to consider whether the changes, which some of the writers on these subjects are urging forward, will comprehend the fair consideration of the *interest* and *loss* upon CAPITAL to which at present the attorneys and solicitors are subjected? This and other serious matters have to be considered before the gentlemen in question can receive briefs without the intervention of attorneys!

LAW OF TITHES.

EFFECT OF LORD TENTERDEN'S ACT.

Salkeld v. *Johnston*.[a]

THIS cause was heard before Wigram, V. C., in November, 1841, who deferred his judgment, until the case of *Fellowes* v. *Clay*, *clerk*,[b] then pending before the Court of Queen's Bench, should be decided. The latter being a claim for total exemption, under Lord Tenterden's Act, from the payment of tithes, the Vice-Chancellor Wigram was of opinion that the facts in *Salkeld* v. *Johnston* differed from that case, (inasmuch as the claim of exemption under Lord Tenterden's Act was not from the payment of all tithes generally, but only from the payment of the tithes of certain produce, such as turnips, potatoes, &c., and tithe of agistment, other tithes being paid to the plaintiff, the Vicar); that this case was not within Lord Tenterden's Act, whatever might ultimately be the decision in *Fellowes* v. *Clay*; and on the 8th February, 1842, Wigram, V. C., decreed an account of the tithes claimed by the plaintiff's bill.

The Cause was re-heard before Lord Lyndhurst, (on appeal from the decree of V. C. Wi-

[a] Reported in 1 Hare, 198.
[b] Since reported in 4 Adol. & Ellis, N.C. 313.

gram,) on the 17th and 18th Nov. 1843, and his Lordship, on the 21st of the same month, in consequence of the judgment given (after the cause had been heard before the Vice-Chancellor), by Lord Denman, upon Lord Tenterden's Act, in *Fellowes* v. *Clay*, ordered a case to be sent for the opinion of the judges of the Court of Common Pleas:—whether, under the circumstances as disclosed in *Salkeld* v. *Johnston*, a claim of exemption could be established under Lord Tenterden's Act. The case so sent is set out *verbatim* in the printed report of this case in the Common Pleas, 2 Com. Bench Rep. 749. As had previously occurred in the Queen's Bench, in *Fellowes* v. *Clay*, the judges of the Court of Common Pleas were equally divided in opinion in *Salkeld* v. *Johnston*: the late Lord Chief Justice Tindal and Creswell, J., being of opinion that a claim of exemption could not be established under Lord Tenterden's Act;—Coltman and Erle, JJ., being of opinion that it could be established.

Upon the cause coming on for further directions and costs reserved by Lord Lyndhurst's Order of 21st Nov. 1843, (made on the rehearing of the cause on the appeal,) and upon the opposite certificates returned from the judges of the Court of Common Pleas, the present Lord Chancellor, on the 19th November, 1846, ordered the same case to be sent for the opinion of the judges of the Court of Exchequer. On that case coming on for argument before the judges of the Court of Exchequer, they desired to have the case of total exemption from the payment of tithes, as in *Fellowes* v. *Clay*, imported and introduced into the case of *Salkeld* v. *Johnston*, and two questions to be thereupon raised for their opinion in *Salkeld* v. *Johnston*, viz., 1st, the case of an entire exemption from the payment of tithes of every kind; 2ndly, the question of exemption from the payment of tithes of particular produce, other tithes being paid, being the question originally proposed in *Salkeld* v. *Johnston*. [See these questions and the unanimous certificate of Pollock, C. B., and Parke, Alderson, and Platt, B. B., *ante*, p. 410.] The certificate in answer to the first question being, that an exemption could be maintained under the circumstances mentioned in that question, provided all the tithes of all the titheable matters from time to time growing on the said parts of the said lands *be shown to have been during the whole of the said period withheld adversely and under a claim as of right acquiesced in by the tithe-owner*; and to the second question, that such a case as *Salkeld* v. *Johnston* is not within the act.

This certificate appears to dispose of *Salkeld* v. *Johnston*, and the Tithe Commissioners, so considering, have disposed of several hundred cases dependent upon the determination of the question in *Salkeld* v. *Johnston*, leaving, as it was stated on the argument of the case before the Lord Chancellor, only 33 cases now undetermined before them.

As to *Fellowes* v. *Clay*, the proviso annexed to the certificate seems to leave that still in doubt. For what was a claim of exemption as of right at the time of the passing of Lord Tenterden's Act, when, without showing some legal ground of exemption, mere non-payment availed nothing. What the Barons intended by this proviso may be collected from the judgment of Lord Denman, delivered for the Court of Queen's Bench, in *Tickle* v. *Brown*, 4 Adol. & Ellis, 367, where it would mean a claim by prescription and adverse uses, or by deed conferring the right of non-payment.

The pleading of the statute in the answer in *Salkeld* v. *Johnston*, according to the report of the case in the Common Pleas, appears to be defective, it not being alleged that the exemption claimed in the plea was an exemption existing at the time of the passing of the act, or within one year previously, as is required by the 2nd section of the act, and which is to be proved in order to bring the case within the act; whereas no exact time or period, during which the exemption claimed was exercised, is shown in pleading the act,—in other words, the pleader has merely followed the general words to be found in the first section of the act, without at all adverting to the second section, which appears a necessary key to the effectual pleading of the statute, as well as to its due construction.

The statute was pleaded in the same terms in the answer in the case of *Pearson* v. *Goulden*, before Knight Bruce, V. C., on 4th December, 1847, (not yet reported,) in which the plaintiff had a decree upon the evidence in a case similar to *Salkeld* v. *Johnston*. *Pearson* v. *Goulden* will probably also come before the Lord Chancellor on appeal. The Lord Chancellor asked for the pleadings, and reserved his judgment in *Salkeld* v. *Johnston*. 20th Nov. 1848.

PALACE COURT PRACTICE.

To the Editor of the Legal Observer.

Sir,—I have perused the letter of your correspondent "Legalis" with every attention, and I confess, with much concern. It seems clear that the recovery of this debt of 16*l.* 12*s.* was placed in the hands of a solicitor of the Palace Court as an agency matter, and which is now done to a very great extent since the County Courts have come into operation, but it does not appear that any intimation was given to Mr. *Z.* that your correspondent had been in communication with Mr. *C.* (the attorney properly concerned) respecting the dispute as to the amount claimed. If this had been the case, Mr. *Z.* would have written to Legalis, and requested him to have named some solicitor of the Court who would receive process on his behalf. This occurs every day, and I am sure that it is my own practice, as well as that of my brethren, to afford to solicitors every facility in arranging cases for their clients; and, if a defence becomes necessary, we do it upon agency terms, leaving the whole

conduct of the cause, and their client's also, in their own hands.

In consequence of this omission, I do not see what else Mr. *Z.* could have done, except serving the process in the regular way, and certainly there is no cause to complain of the manner in which this was effected:—"He thrust a slip of paper in his hands and vanished."

In respect of the other portion of Legalis's statement, it is quite obvious that, whether the filing of the declaration arose from forgetfulness, or from any other cause, the costs of this proceeding ought not to be inflicted upon the defendant. If a sufficient sum was tendered at the attorney's office, and he was desired to take the amount of the debt and costs out of it, and, instead of doing so, says "*he will communicate with his client, and let Legalis know the result;*" he *cannot proceed* without *first giving this notice*, and the Master will, on the taxation of costs, disallow any charges subsequent to the service of the writ. If, on the other hand, Legalis desires to stand upon his right to pay no more than 11*l.* 4*s.* for the debt, that sum can be tendered to the plaintiff's attorney on summons, with the costs of the writ, and if it is accepted, no more expenses than those of the process will be payable. This is the practice in the Superior Courts, and ours is the same in every respect.

If your correspondent "Legalis" will favour me with an interview, I shall have much pleasure in putting him in the way of doing what I have suggested—and that, too, without subjecting him to any expense—the assistance and advice being nothing more than what one professional man is always ready to give to another.

ONE OF THE SIX ATTORNEYS.

Dec. 11*th*, 1848.

PRACTICE OF RETAINERS.

IT will be recollected that we some time ago laid before our readers the rules proposed by the Incorporated Law Society relating to the Practice of Retainers. The Council of the Society had been often applied to regarding disputes between solicitors on various points of practice in regard, 1st, to *General* Retainers—their duration and abandonment; 2ndly, Corporation and Partnership Retainers, particularly where a change took place; 3rd, Special Retainers, and the practice of delivering briefs whenever the case came before the Court; 4thly, of Circuit Retainers, especially where a change of venue took place, or an assize intervened; 5thly, Retainers on Appeals, Writs of Error, and Nonsuits; 6thly, Or, Retainers where opinions had been given on pleadings drawn; 7thly, Where the retained Counsel was promoted; 8thly, On the form of the Retainer and the notice required before accepting an adverse Retainer; 9thly, On the amount of Retainer Fees in various departments of practice.

So long ago as January, 1847, the Council of the Society circulated a series of questions to all the London attorneys and solicitors, and on the receipt of answers from a large number of them in extensive practice, a set of rules was prepared, and on the 6th May, 1847, submitted to the judges and the leaders of the Bar. Having received several proposed modifications of the rules from members of the Bar, they were altered and revised, and, after much deliberation, sent round to all the practitioners in London and the Provincial Law Societies. This circular produced further suggestions, which were repeatedly considered, and finally a meeting was convened in the Hall of the Society, on the 29th November, and the rules were unanimously adopted, and will shortly be sent to the members of both branches of the profession.

ABATEMENT OF PROFESSIONAL CHARGES.

To the Editor of the Legal Observer.

SIR,—I trust I shall be allowed to ask, through the medium of your valuable periodical, the following question, as I am confident it relates to the mode of doing business by many in the profession. A respectable tradesman called upon me a few days ago with a list of accounts to get in. Of course I felt obliged by his favours, but before leaving me he said, "I presume you will do business with me on the same terms as my old friend so-and-so used to do." "What is that," I immediately asked. He replied, "Why, in all unsuccessful cases, that you charge me only one-half." I was rather staggered at my friend's remarks, as I began to reflect on our small profits, and how little sometimes the full costs are for a gentleman desiring to move in a respectable sphere of life, and without being obliged to descend to any meanness, I thereupon began to look serious, and was almost inclined to say, "take your business to some one else; I shall never descend to such practices." However, my friend assured me he could go to respectable offices, who would do the business for him on those terms, and in fact did name a respectable solicitor, who, he stated, had done business for him on such terms a few years ago. I therefore paused and said, "Well, I will consider about it, and I will do the best I can for you,"—having in my mind the course I am now adopting, that is, taking an opinion from a source before which I think all matters of such a nature should be

brought, namely, through an organ of the profession.

A YOUNG ATTORNEY.

[On receiving this letter, we made some remarks in our notices to correspondents, and have had the following additional letter.]

I think the subject very important, and should be gratified to see my remarks spread far and wide in order to ascertain how far an attorney may be considered acting unprofessionally, in giving undertakings to their clients to charge only one-half in unsuccessful cases, and how far the Incorporated Law Society countenance or approve of such a system. A young man commencing business with a desire to act with the strictest professional conduct, may well find his services not much required, when old offices undertake business upon a reduced scale. A proper understanding ought to be come to forthwith, and an opinion given by every Law Society, as to the course expected to be pursued by all respectable practitioners.

Liverpool, 4th December, 1848.

NOTES OF THE WEEK.

GUILDHALL SITTINGS.

THE Nisi Prius Sittings after Term, for cases, the venue of which was laid in London, commenced for all the Courts of Law, at Guildhall, on Monday. In the Queen's Bench, there were 167 causes entered for trial, of which 104 were remanets: in the Common Pleas, 118 causes for trial, of which 67 were remanets, and in the Exchequer, of the 200 causes for trial, 83 were new causes, and 117 remanets. The Special Jury appointments extend to the Saturday preceding Christmas Day.

RECORDERSHIP OF NORWICH.

Mr. M. Prendergast, of the Norfolk Circuit, has been appointed Recorder of Norwich, in the place of Mr. Jermy, whose recent assassination has excited so much public attention. Mr. Prendergast was called to the Bar so far back as the month of Nov. 1820.

ANNUAL REGISTRATION OF ATTORNEYS.

Although the 16th inst. is the last day for taking out the Annual Certificate, to enable the attorney to recover his fees for the previous month,—the names will be inserted in the Law List of the ensuing year, provided the duty be paid on or before the 31st instant. To entitle the applicant to the Registrar's Certificate, the usual declaration must be left at the Law Society's Office, six days previously.

NOTES OF CASES IN MICHAELMAS TERM.

SALE OF COPYHOLDS.—BANKRUPT.—MORTGAGEE.—SET-OFF.

ONE Ellis became bankrupt in 1824, being entitled to copyhold property, which was put up to sale but bought in. The assignee died, and no successor was appointed for many years. In the mean time the bankrupt took possession of the property and mortgaged it. In 1843, the plaintiff was appointed assignee, and sold the property by auction to the defendant, who was the mortgagee of the bankrupt, and claimed to set-off the money lent: contending, that the laches of the creditors had enabled the insolvent to commit the fraud. The Vice-Chancellor Wigram refused to allow the set-off, and made a decree in the plaintiff's favour, from which the defendant appealed.

The *Lord Chancellor* said, the insolvency was a public matter, and if the defendant had made the proper inquiries, he would have discovered that the property belonged to the creditors. The assignee was frequently not admitted on the Court Roll to save the fine. The appeal was therefore dismissed with costs. *Cole* v. *Cole*, Lord Chancellor's Court, 16th Nov. 1848.

SURGEON. — RESTRAINT OF PRACTICE. — INJUNCTION.

An agreement was entered into between a surgeon and his assistant, the latter engaging not to practise at Macclesfield or within seven miles. After some time the assistant was discharged on the alleged ground of immoral conduct, and commenced practice at Macclesfield. A bill was filed, praying an injunction. The answer altogether denied the alleged immorality, and stated that an action was pending between the parties. Vice-Chancellor Knight Bruce refused an injunction to restrain the defendant from practising, and on appeal to the Lord Chancellor,

The *Lord Chancellor* said, where the equity claimed depended on a legal right, the parties must be left to try the question, which, in the present case, depended on the plaintiff being justified in discharging the defendant. If he were not, the defendant would be released from his covenant. The appeal was dismissed with costs. *Sainter* v. *Ferguson*, Lord Chancellor's Court, 16th Nov. 1848.

INJUNCTION.—TRIAL.—ACCOUNT.

The defendants, engineering surveyors, had been employed by a company, which was indebted to them in nearly 700*l.*, and they brought their action in November, 1847. This suit was instituted in May, and the answers put in. The case made by the bill was, that by reason of the different sets of persons engaged in surveying, and the intricacy of the defendant's accounts, it was impossible that it could be tried at law.

The *Vice-Chancellor* said:—The bill was filed in May, but no injunction asked for until the 13th of this month. The allegation in the bill relative to the discovery came to this,—that if the plaintiffs had a discovery of the allegations in the bill, they could successfully resist the action. They had obtained a discovery already, and, therefore, on their own showing, could successfully resist the action, and had no title to come here to have the accounts taken before the Master. The evidence might be lengthy, and the jury might find it difficult to determine the value of the work done, but still this was a case more proper for a jury to decide than a Court of Equity; and the injunction must therefore be refused. *The South-Eastern Railway Company* v. *Martin*. Vice-Chancellor of England, Nov. 16, 1848.

ATTORNEY AND CLIENT.—JOINT DEFENDANT.

Sir John De Beauvoir, Mr. Fisher, and some others, were the managing committee of the Warwick and Worcester Railway Company, and the majority agreed to amalgamate the company with the London and Birmingham Extension Railway Company, and 15,000*l.* was stipulated to be advanced. Some of the shareholders filed their bill, charging mismanagement against the directors, and praying an injunction to restrain them from performing the agreement. The committee gave the solicitors of the company authority to defend the suit, and they entered appearances for the defendants, one of whom, Mr. Fisher, now moved to withdraw his appearance.

The *Vice-Chancellor* said, there were few rights which might not be bargained away. The principles on these subjects were clearly laid down by the Lord Chancellor in a recent case, where he had granted an injunction to restrain a person from opposing a bill in parliament, and held that an agreement not to oppose a bill in parliament could be upheld. A person agreeing with other persons to defend what had been done had made away with his right to defend himself separately. If the bill charged that 15,000*l.* was advanced improperly, and sought to make the committee of management responsible, they had power to direct their solicitors to enter appearances for all the defendants, and Mr. Fisher could not complain. The motion must, therefore be refused. *Goodman* v. *De Beauvoir*. Vice-Chancellor of England, Nov. 16, 1848.

POOR REMOVAL ACT.—RETROSPECTIVE OPERATION OF PROVISO.

Upon a case from the Surrey Quarter Sessions, it appeared that a widow, named Mary Sweney, resided in the parish of St. John, Southwark, uninterruptedly from April, 1839, until May, 1847, when an order of removal was obtained to the parish of Christchurch, Surrey: and it further appeared that from March, 1843, up to September, 1846, the said Mary Sweney, though residing in St. John's, was maintained out of the rates raised in the parish of Christchurch. The question for the Court upon this state of facts was, whether the time during which the pauper received relief from Christchurch was to be excluded from the computation of time during which she resided in St. John's? In other words, whether the first proviso of the statute 9 & 10 Vict., c. 66, (cited, *ante*, p. 122,) and which excepted, from the computation of five years mentioned in the enacting part of the section, any period during which the pauper received relief, applied to a period antecedent to the statute? According to its plain grammatical construction, it was said, that the proviso was not retrospective in its operation, because in specifying the time to which it was applicable the future tense *shall* was used, whilst in the enacting clause, which was meant to be retrospective, the past future *shall have*, were the words employed.

The Court of Queen's Bench, however, determined, that as the enacting clause applied to any residence of five years before the application for a warrant of removal, the exceptive proviso was applicable to any period comprehended within the enacting clause, although such period might have elapsed before the act was passed. The enacting clause extended to all persons residing five years, except those afterwards excepted by the proviso. The proviso operated in excluding from the computation the duration of certain things mentioned in it, of which the receipt of parochial relief was one. In holding that the exception applied to all the time to which the enacting clause extended, the Court gave effect to a construction consistent with the principle of the exception and the intention of the legislature.

Applying this rule of construction to the case under consideration, the Court held, that the period during which the pauper received relief was to be excluded from the computation, and as she had not resided five years in the parish of St. John, excluding the period during which she was in the receipt of relief, she was legally removeable, and the order for her removal to Christchurch must be affirmed. *Reg.* v. *The Inhabitants of Christchurch, Surrey*. Queen's Bench Court, Nov. 25, 1848.

INDICTMENT FOR REMOVING PAUPER.

After an order of removal was confirmed on appeal, subject to a special case, and before a *certiorari* to remove the special case into the Queen's Bench, the pauper was removed, and the removing officer indicted for such removal.

The Court of Queen's Bench held, that an indictment only lay where some known rule of law was violated, and that the removal of the pauper, though it might be irregular, was not indictable, unless force, menace, or fraud, was resorted to, which did not appear in this case. Judgment was, therefore, given for the defendant. *Reg.* v. *Cooper*. Queen's Bench, Dec 4, 1848.

RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

Major v. *Major*. Dec. 9 & 11, 1848.

ALTERING THE FORM OF AN ORDER, AFTER SETTLING THE MINUTES.—COSTS OF APPEARANCE OF UNNECESSARY PARTIES.

It is a gross irregularity to procure the registrar to alter, without the consent of all parties interested, the form of an order, after the minutes have been settled; and the solicitor obtaining such alteration will be ordered, as a matter of course, to pay all the costs consequent upon the application to strike it out.

Parties unnecessarily served with notice of motion will not be allowed the costs of their appearance.

THIS was an application for the costs of a motion, under the following circumstances:—At the hearing of the cause, on the 31st of May last, his lordship ordered, amongst other things, that it should be referred to the Master to inquire what costs *in obtaining probate* of a certain will, &c., had been incurred by the plaintiff, Thomas Major, the younger. On the 17th of June following, all the parties attended the registrar to settle the minutes of the order, and it was then suggested by the solicitor for defendants, William Major and others, to insert the words "in the Ecclesiastical Court" between the words "costs" and "obtaining probate." The proposed alteration was objected to by the plaintiff's solicitor, and, after discussion, disallowed by the registrar (Mr. Colville, sen.) On the 8th of July following, the plaintiff's solicitor served notice to attend the registrar on the 10th to pass the order. The registrar being on that day in attendance in Court, the said defendant's solicitor waited upon him there, and handed to him a written paper requesting him to insert the objectionable words, upon the grounds that they were in the short-hand writer's notes of the Lord Chancellor's judgment, and also in Mr. *Stuart's* indorsement on his brief at the hearing. Mr. Colville, under the impression that all parties consented to the alteration, inserted the words in the order. The order was then re-copied, and no interlineation appeared upon it when delivered out to the plaintiff's solicitor. The above-mentioned notice for the 10th July was renewed for the 11th, and on that day the registrar read through the order in the presence of all parties. No objection was then raised, and the order, with the additions, was passed. A motion was subsequently made on behalf of the plaintiff, that the words inserted should be struck out, and that the said defendant's solicitor should pay the costs of the motion. On the 9th of August, his lordship ordered the words to be struck out, and, upon the application of the said defendant's solicitor, reserved the question of costs.

Mr. *Rolt* and Mr. *Hislop Clarke* now renewed the motion on the costs reserved. They asked that the said defendant's solicitor might be ordered to pay all the costs consequent upon the application to restore the order to its original form, inasmuch as he had caused the alteration to be made without the knowledge or consent of all the parties interested; and they submitted that he had committed a great irregularity in obtaining such alteration without communicating with the other side. The affidavit of the plaintiff's solicitor stated, that he did not notice the alteration when the order was passed.

Mr *Stuart*, Mr. *James Parker*, and Mr. *Toulmin*, for the said defendant's solicitor, urged that their client had not committed such an irregularity as would call for the visitation of costs. Under the impression that he was correcting the registrar's minutes, he had requested him to make the alteration, and the error, if any, consisted in the registrar's acquiescence. Their client admitted that he had not informed the other side of the alteration, but he distinctly swore that he had not in the remotest manner intimated their consent to the registrar when the alteration was made.

Mr. *Malins* and Mr. *Welford* appeared for the defendants William Major and others, who were represented by the last-mentioned solicitor. The learned counsel submitted that they were not necessary parties to this application, and that having been served with a new notice of motion, the costs of their appearance ought to be paid by the plaintiff.

The *Lord Chancellor* did not call for a reply.

Dec. 11. His lordship said, that he had been informed by Mr. Colville that he would not have made the alteration, except under the impression that it was with the consent of all parties. There had been a deliberate consideration of the minutes before the registrar on the 17th of June. The latter had then disallowed the alteration. Now, it was quite plain, and indeed it could not be too much understood amongst solicitors, that, under these circumstances, it was the bounden duty of every solicitor, if he thought he could get any alteration from the officer of the Court, to have obtained a regular discussion in the presence of all parties interested. Beyond all question, this alteration had taken place most irregularly. It was impossible to treat as regular for one party to go behind the back of the other to the officer of the Court, and obtain an alteration which had been previously deliberately discussed and settled by that officer. It would put all good faith between the parties at an end, if such a proceeding should be tolerated. There had been gross irregularity, but his lordship would not go into the question of good or bad faith, as he thought it would be safer to put the matter on the broad ground that when once the form of an order had been settled, it could only be altered by bringing all the parties interested before the registrar, It was not justifiable for any party to go behind

the back of his opponent, and, by a statement (whether true or false, it was immaterial,) obtain an alteration without notice to the other side. The order had been restored to its original form, and it was quite a matter of course that the party who had caused the alteration should pay the costs of the party applying for the restoration.

With respect to the clients of Mr. *Malins*, it was clear that they were not necessary parties to this application, but as they had chosen to appear, they must pay their own costs.

Rolls' Court.

Queen v. *Prosser*. Nov. 9, and 25.

PATENT.—SCI. FA.—INJUNCTION.

This Court will not interfere with the discretion of the Attorney-General, as to allowing the prosecution of a sci. fa. *to set aside letters patent, upon the ground of objections to the legal right of the prosecutor to obtain the writ, not affecting his conduct in obtaining or prosecuting it.*

THIS was a motion seeking to restrain proceedings upon a *sci. fa.*, which had as its object to set aside a patent granted to a gentleman of the name of Prosser, upon the ground—1st, that the prosecutor was an alien, and therefore could not be allowed to avail himself of this writ; 2ndly, that the writ was collusively obtained; 3rdly, that there was not sufficient security. Upon the 1st point it was contended, for the defendant—1st, that the prosecutor was not an alien; 2ndly, that if he were an alien, he still would be entitled to the writ. On the 2nd and 3rd points it was contended, that the objections were not true. It appeared that the plaintiff was born in America, but that his father had subsequently been naturalized by act of parliament. To show that the naturalization of the father had the effect of naturalizing the son, reference was made to Co. Litt. 129, a., which, however, does not expressly state that the retrospective naturalization would extend to persons not born in England. The position that an alien could not be entitled to a *sci. fa.*, was supported by a reference to Sir Oliver Butler's case, Ventris, ii. 344; 3 Levinz, 221; in the Lords, to *Cartright* v. *Amatt*, 2 Bos. & Pul. 43; *Harmer* v. *Plane*, 14 Ves. 130; *Brewster* v. *Weld*, 6 Mod. 23; Vin. Abr. Prerog. xvii., 98, 122; Comyn's Dig. Alien, *c.* 5; Co. Litt. 129, b. On the other side, reference was made to *Cocks* v. *Purday*, Law Jour. 12th May, 1848; *Pisani* v. *Lawson*, 6 Bing, N. C. 90; *Beard* v. *Egerton*, 3 C. B. 97; *De Carriere* v. *De Colune*, 4 Ves. 577.

Mr. *Hill* and Mr. *Hindmarsh*, for the motion.
Mr. *Turner* and Mr. *Webster* contrà.

As, however, the decision turned entirely upon the jurisdiction of the Court to interfere with the discretion of the Attorney-General, it does not appear necessary to state more fully the arguments used. Upon the question of the interference with the Attorney-General it appeared, that according to the present practice, a party who has obtained a patent, and is apprehensive of a *sci. fa.* being sued out in respect of it, is allowed to enter a caveat in the Attorney-General's office, and that, when the writ of *sci. fa.*, after being obtained from the Petty Bag, is carried to the Attorney-General's office for his fiat, (without which no proceedings can be taken upon it)—notice is given to any party who has entered a caveat—and the Attorney-General hears any objection which may be urged to his sanctioning of these proceedings by him. On the present occasion, however, the Attorney-General refused to interfere, upon the ground that there could be no appeal from his decision should he refuse to sanction the prosecution of the suit. To show that this Court had jurisdiction to interfere, the *Queen* v. *Neilson*, 1 Webs. 665, was referred to.

Lord *Langdale*, after stating the facts of the case, expressed his opinion, that the Court ought not to interfere with the discretion of the Attorney-General in allowing the *scire facias* to be prosecuted, unless some vexatious or fraudulent conduct on the part of the prosecutor could be shown, and as no such case was made here, he refused to interfere.

Queen's Bench.

(Before the Four Judges.)

Doe d. Blain and wife v. *Bather*. Michaelmas Term, 1848.

EJECTMENT.—COSTS.—STAY OF PROCEEDINGS.

Where an action of ejectment is brought by A. *against* B., *a co-devisee under the same will, and a verdict for the lessor of the plaintiff, and* B. *and wife afterwards join in bringing an ejectment against* A. *in respect of different property claimed under the same will, the Court ordered a stay of proceedings till the costs in the former action were paid.*

A RULE *nisi* had been obtained to stay proceedings in an action of ejectment till the costs of a former ejectment had been paid. An action of *Doe d. Bather* v. *Blain and Edwards*, had been tried at Shrewsbury, and a verdict found for the lessor of the plaintiff. Blain, one of the defendants in that action, afterwards joined with his wife in an action of ejectment against the lessor of the plaintiff in the former action. Bather and Blain both claimed under the same instrument, (the will of one William Blain,) but in respect of different property.

Mr. *Gray* now showed cause. A similar application to the present was refused by the Court in *Doe d. Taylor* v. *Harris*,[a] but that case is said to have been overruled by *Doe d. Heighley* v. *Harland*.[b] In that case the parties were in effect the same. In the present case there are separate claimants under the same instrument for different property, and they may bring separate actions. There is no legal privity between the devisee of one property and the devisee of another, although left by the same will. This is an application to the dis-

[a] 4 Man. & Ry. 569. [b] 10 Adol. & Ellis, 761.

cretion of the Court which must be exercised on the particular circumstances of each case.

Talfourd, Serjeant, in support of the rule, was not heard.

Lord *Denman*, C. J. I think we ought not to interfere. I cannot help seeing that the parties disputing this will are in effect the same.

Mr. Justice *Coleridge*. I am of the same opinion. An action is brought against the present lessor of the plaintiff, and a verdict is given against him, and an application is made to stay proceedings in an action of ejectment brought by him and his wife against another devisee under the same will. He is seeking to put in issue the validity of the same will. I think in effect the parties are the same, and that we ought to interfere to stay proceedings till the costs in the former action are paid.

Erle, J. It is said that the lessor of the plaintiff is a stranger, and that he should not be called upon to pay the costs in the former action before he can proceed in the present one. These parties are co-devisees under the same will, they have a joint interest, and I think are substantially the same parties, and therefore I think the general rule of practice is applicable.

Rule absolute.

Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

Jones v. *Owen*. November 14, 1848.

COUNTY COURT.—JURISDICTION.

The County Court has no jurisdiction under section 122 *of the* 9 *&* 10 *Vict. c.* 95, *to entertain an application, where the parties stand in the relationship of mortgagor and mortgagee.*

Time for moving for a writ of prohibition.

THIS was a rule for a writ of prohibition to be directed to the judge of the County Court of Carnarvonshire, holden at Portmadoc, to restrain all further proceedings in this cause. The plaintiff in the action was the mortgagee of certain premises, and the defendant was the wife of the assignee of the mortgagor, and the action was brought under the 122nd section of the 9 & 10 Vict. c. 95, to recover possession of the premises. At the hearing, the judge of the County Court, after deciding in favour of the plaintiff, ordered a warrant to issue for possession to be given at the expiration of seven days. This warrant was executed on the 6th of June, but on the previous day the present rule was obtained, which was served upon the 7th; the ground on which the rule was moved for was, that the 122nd section of the 9 & 10 Vict. c. 95, only applied to cases where the relation of landlord and tenant existed between the parties, which was not the case here.

Welsby showed cause, and contended, 1st, that the prohibition was too late, as the warrant of possession had actually been issued, and the plaintiff put into possession. 2ndly, That as a constructive tenancy existed between the mortgagee and mortgagor, the County Court had jurisdiction under the 122nd section.

M. Lloyd, contrà, argued,—1st, That as the defendant had come to the Court at the earliest moment, and had actually obtained the rule before the warrant of possession was executed, he was in time. 2nd, That the present proceeding was not within the meaning of the 122nd section, which applied only to cases where there is a tenancy, and determinable at a fixed period or upon notice, and where the relationship of landlord and tenant exists.

Patteson, J., thought, that this was clearly a matter not within the act, which refers to cases between landlord and tenant only, and cannot be construed to include mortgagor and mortgagee. There was, therefore, he thought no jurisdiction whatever, in the County Court to determine the cause. He thought also, that as the rule had been obtained before the warrant of possession was actually executed, that the motion had been made in due time.

Rule absolute.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRINCIPLES OF EQUITY.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75.

Law of Costs, p. 35.

Law of Evidence, p. 56.

Law of Property and Conveyancing, p. 113.]

ACCOUNT.

A. placed his son, who was much addicted to intemperance, under the care of *B.*, a relation by marriage, and, at his death, left his son an annuity of 500*l*. The son resided with *B.* for several years after his father's death, and until a few months before his own death. *B.* always accompanied him when he went to receive his annuity from his father's executors, and he, as soon as he had received it, handed it over to *B.* to keep for him; and *B.*, from time to time, gave him small sums, and paid his bills.

Held, that *B.* was accountable in a Court of Equity for what he had received from the son. *Terry* v. *Wacher*, 15 Sim. 447.

AGREEMENT, RESCINDING.

Lapse of time.—A contract for the sale of the vendor's interest in a manor under a lease for lives, was made on the 16th of October, 1840. Objections were taken to the title, and

a correspondence between the solicitors of the vendors and purchaser took place, and continued until the 20th of August, 1841, when the purchaser gave notice to the vendors that, the title being defective, he rescinded the contract. The correspondence with reference to the title still proceeded, (the purchaser's solicitor claiming his right to insist upon the notice, but giving the vendors two months more to complete the title,) until the 17th of January, 1842, when the purchaser intimated that he should fall back to his position under the rescinded contract. The bill was filed on the 30th of August, 1843: *Held*, that the interval between the 20th of August, 1841, and the 17th of January, 1842, ought not to be regarded in the question of laches, but that the delay, after the 17th of January, 1842, before the bill was filed, precluded the vendors from sustaining their suit for specific performance.

The fact that the purchaser allowed the deposit to remain in the possession of the vendor from the time he (the purchaser) declared the contract to be rescinded until shortly before the bill was filed, when he brought his action to recover it, did not affect the question of laches. The possession of part of the property comprised in the contract, taken under a mutual arrangement, and in ignorance of the objection to the title which was afterwards discovered and relied on, did not affect the question of laches.

The tendency of the Court in modern cases has been to restrict the exercise of its jurisdiction in enforcing specific performance of contracts to those cases in which the plaintiff has been prompt in seeking his equitable remedy.

The purchaser being in possession of part of the property under the arrangement, and being advised to rescind the contract and assert his paramount title to the property, was not bound to give up possession before he could assert such paramount title by making a formal entry on the property. *Southcomb* v. *Bishop of Exeter*, 6 Hare, 213.

Cases cited in the judgment: Taylor v. Brown, 2 Beav. 180; King v. Wilson, 6 Beav. 124; Walker v. Jeffreys, 1 Hare, 341; Stewart v. Smith, V. C., 16 Dec. 1824; Watson v. Reid, 1 Russ. & M. 236.

ANNUITY.

Arrears.—Interest.—The arrears of an annuity do not carry interest. *Jenkins* v. *Briant*, 36 L. O. 367.

ASSETS.

1. *Valuation of annuity.—Abatement.—Residuary legatee.*—Where a testator's effects are insufficient to satisfy an annuity bequeathed by the will and the pecuniary legacies: *Held*, that the annuity ought to be valued, and that the annuitant was entitled at once to the amount of the valuation, subject to an abatement in proportion to the abatement of the pecuniary legacies; and that, although the annuitant died before the payment of the annuity in full would have equalled the abated amount of the valuation, the other legatees would have no claim to the surplus of that amount. *Wroughton* v. *Colquhoun*, 1 De G. & S. 357.

2. Where a testator bequeathed to his widow two annuities, one payable to her so long as she should continue his widow, provided she should not permanently quit England before her daughter's marriage, and the other payable to her generally for life, and the assets were insufficient to pay the annuities and legacies in full, the Court ordered the annuities to be valued, and to abate proportionably with the legacies; and directed the amount of the apportionment, in respect of the former of the annuities, to be laid out in the purchase of a government annuity, and the amount of the apportionment of the latter of the annuities to be paid out to the annuitant. *Carr* v. *Ingleby*, 1 De G. & S. 362.

3. Form of decree when an annuity abates by reason of deficiency of assets. Amount of abated valuation ordered to be paid to representatives of deceased annuitants. *Long* v. *Hughes*, 1 De G. & S. 364.

BILL OF EXCHANGE.

Accommodation of drawer.—Consideration.—Delivery to be cancelled.—*A.* accepted a bill of exchange for 150*l.*, drawn by and for the accommodation of *B.* *B.* indorsed the bill, and then, in order to facilitate its being discounted, procured *C.* to indorse it. *B.* subsequently, and before it became due, delivered the bill to a person who advanced him 100*l.* upon it. When the bill became due the holder demanded payment of the 100*l.* from *C.*, and *C.* some weeks afterwards took up the bill by giving the holder a new bill of exchange for 160*l.*, and the holder then paid him a further sum of 50*l.*, in addition to the 100*l.* he had formerly paid to *B.* *C.* brought his action against *A.* upon the bill, and *B.* filed his bill to restrain the action, and have the bill delivered up. The common injunction was obtained, but was dissolved on the merits, and *C.* recovered judgment in the action. At the hearing the bill was dismissed for want of equity, with costs. *Hammon* v. *Sedgwick*, 6 Hare, 256.

See *Trust of Goods*.

CHARGING ORDER.

Trust monies.—The Court will not give effect to a charging order under the 1 & 2 Vict. c. 110, on the application of the party who has obtained it, by restraining trustees from paying over trust monies in the way directed by an order made before the charging order was obtained. *Newton* v. *Askew*, 36 L. O. 506.

CHARITY.

1. *Ecclesiastical Courts.—Want of interest.*—It was referred to the Master to approve of a scheme for the application of the revenues of a charity, part of which was applicable to ecclesiastical purposes, of the parish of *M. W.* By an act of parliament passed in 1840, certain powers, &c. were given to the Ecclesiastical Commissioners and to the Queen in council, and it was enacted, that so much of this charity property "as should, upon due inquiry, be

found legally applicable thereto, should, by the like authority, be applied for the purpose of making a better provision for the cure of souls in the parish of *W. M.*" The Ecclesiastical Commissioners applied for liberty to attend the Master on the scheme, but the Court *held*, that the act did not invest the Commissioners with jurisdiction to determine what was legally applicable, which rested with the Court, and that the words "like authority" did not refer to the Commissioners; that if this Court ascertained what portion, according to the endowment, ought to be applied for spiritual purposes, even in a particular manner, the act did not authorize the Commissioners or the Queen in council to propose or ratify a different scheme; the Commissioners had not vested in them any such trust as could be performed or recognized by this Court; that they had no estate or interest in the matters in question, and no right to be treated as independent parties in the information, as to appear as such, and therefore that they could not sustain such a petition. *Attorney-General* v. *Wimborne School; Exparte Ecclesiastical Commissioners*, 10 Beav. 209.

2. *Tenants.*—The Court, in letting the lands of a charity, is not justified in refusing a higher rent out of liberality to an old tenant, though it will make him reasonable compensation for any loss sustained by the termination of his tenancy. *Attorney-General* v. *Gains*, 35 L. O. 589.

3. *Gift to poor preachers, &c.*—Where lands were conveyed by deed to trustees for the benefit "of such poor and godly preachers for the time being of Christ's holy Gospel, and for such poor and godly widows for the time being of poor and godly preachers of Christ's holy Gospel, as the trustees for the time being should think fit, provided that the trustees should have a primary respect to such objects thereof as were then, or should afterwards be, in York, Yorkshire, or other northern counties in England, not excluding those in other places and counties as the trustees should think fit." And by another deed a hospital was conveyed to the same trustees, with the following declaration:—"Let none of evil fame or report be admitted, but such as are poor and piously disposed and of the Protestant religion. Let every almsbody be one that can repeat by heart the Lord's Prayer, the Creed, and Ten Commandments, and Mr. Edward Bowle's Catechism:" *Held*, that the two deeds must be taken together, and that English orthodox dissenters of Baptist and Independent congregations and Presbyterians were the proper recipients of the charity under the deeds. *Attorney-General* v. *Wilson*, 36 L. O. 229.

COMPOSITION DEED.

Creditor's refusal to concur.—Whatever may be the general rule, if there be any, as to extending indulgence to a creditor under a composition deed, who does not claim the benefit of the deed within the time specified therein; that rule does not apply to a creditor who actually refuses to come in under, or assent to the deed within the time limited, and who does not retract that refusal within that time. *Johnson* v. *Kershaw*, 1 De G. & S. 260.

CONSIDERATION.

See *Bill of Exchange.*

CONTINGENT DEBT.

Judgment charge upon an annuity.—Judgment debt, payable at a future day, and subject to be defeated in the event of the previous death of the debtor, *held* to be a charge, under 1 & 2 Vict. c. 110, s. 13, upon an annuity bequeathed to the debtor, and payable out of real estates, but not so as to affect growing payments accruing due before the judgment debt became payable. *Younghusband* v. *Gisborne*, 1 De G. & S. 209.

COPYHOLD.

Seizure quousque.—The right of a lord of a manor to seize *quousque*, is not taken away by 11 G. 4, and 1 W. 4, c. 65. *Dimes* v. *Grand Junction Canal Company*, 15 Sim. 433.

See *Creditors' Suit*, 1.

CREDITORS' SUIT.

1. *Copyhold assets.*—A decree in a creditors' suit directed a sale of a portion of the real estate of a testator for payment of his debts. The sale took place of freehold and copyhold estates, of which *A. B.* was tenant for life, with contingent remainder over to her children as tenants in common in fee. On a petition under the act 1 W. 4, c. 47, praying that the tenant for life might be ordered to convey and surrender the property to the purchasers, the Court made the order, notwithstanding that the statute 3 & 4 W. 4, c. 104, making copyhold estates assets for payment of debts, had passed subsequently. *Branch* v. *Browne*, 36 L. O. 145.

2. *Account of rents.*—In a creditor's suit, an account of the rents and profits received since the death is never directed, until the produce of the sale of the real estate proves insufficient for payment of the debts. *Stratford* v. *Ritson*, 10 Beav. 25.

See *Composition Deed; Marriage Settlement.*

EQUITY RESERVED.

The Court will not, upon an equity reserved, give relief to a party who has failed to establish his right at law, though the failure has arisen from the forms of proceeding at law having prevented the real question being tried; but it will, on a proper application, take such steps as may be required to have the legal right fairly tried. *Smith* v. *Earl of Effingham*, 34 L. O. 510.

EXECUTORY AGREEMENTS.

Quære, whether, in executory agreements, there is a presumption in favour of the insertion in the executed contract of all such stipulations as are customarily inserted in such contracts? *Ricketts* v. *Bell*, 1 De G. & S. 335.

FACTORS' ACT.

The Factors' Act (5 & 6 Vict. c. 39) applies

to mercantile transactions, and not to the case of advances made upon the security of furniture used in a furnished house—not in the way of trade—to the apparent owner of such furniture, such apparent owner afterwards appearing to be the agent intrusted with the custody of the furniture by the true owner. Such "agent" is not an agent, nor is such furniture "goods and merchandize" within the meaning of the statute 5 & 6 Vict. c. 39. *Wood* v. *Rowcliffe*, 6 Hare, 191.

Case cited in the judgment: Monk v. Whittenbury, 2 B. & Ad. 484.

FEME COVERT.

Anticipation.—Separate property.—A marriage settlement directed the trustees, during the lady's life, to receive the income of the settled property, when and as often as the same should become due, and to pay it to such person or persons as she might, from time to time, appoint, or to permit her to receive it for her separate use; and it declared that her receipts, or the receipts of any person or persons to whom she might appoint the same, *after it should become due*, should be valid discharges from it.

Held, that the lady was restrained from anticipating the income provided for her. *Field* v. *Evans*, 15 Sim. 375.

See *Husband and Wife.*

FRAUD.

Undue influence.—Guardian and ward.—A. and *B.* consented to postpone the payment of 5,000*l.* due to them from *C.*, in consideration of *C.* procuring and giving them the plaintiff's guarantee for that sum, and *C.* at the same time informed *A.* and *B.*, that the plaintiff was his niece, and was possessed of considerable property; that she had resided with him for some time; that he had been her guardian, and that she had been of age for about a year and a-half.

Afterwards another arrangement was made between *A.* and *B.* and *C.*, in pursuance of which *A.* and *B.* delivered up the guarantee, and *C.* procured and gave them the plaintiff's cheque for 3,000*l.* and her promissory note for 1,200*l.*, as securities for his paying them those sums.

The Court granted, and afterwards continued, an injunction, restraining *A.* and *B.* from prosecuting an action against the plaintiff to recover the 3,000*l.*; and, notwithstanding they had obtained a verdict, it refused to order the money into Court. *Maitland* v. *Irving*, 15 Sim. 437.

See *Joint-Stock Company; Marriage.*

GUARDIAN AND WARD.

See *Fraud; Infant*, 3.

HUSBAND AND WIFE.

Repayment to wife's estate of husband's debt paid thereout. — Statute of Limitations. — In 1772, a husband and wife mortgaged their respective estates for securing a debt of the husband. The husband died in 1776, and in 1782 the produce of his estate was brought into Court, and accumulated. The wife died in 1805, and in 1832, the husband's mortgage creditor, neglecting to prosecute his claim against the husband's assets, obtained payment out of the produce of the wife's estate. In 1840, the heir of the husband petitioned for payment out of Court of the accumulated fund arising from the husband's estate, and a reference was made to ascertain the incumbrances thereon. An unpaid judgment creditor of the wife carried on a claim, which having been disallowed, as founded on a mere equity, he, in 1841, filed a bill against the heir of the husband and the representative of the wife, to establish his claim against the fund: *Held*, 1st, that the husband's debt having been paid out of the wife's estate, her estate had a right to be recouped out of the estate of the husband; and 2ndly, that the plaintiff's claim was not barred by the Statute of Limitations. *Lancaster* v. *Evors*, 10 Beav. 154.

See *Waste.*

INFANT.

1. *Lease.*—The Court has no jurisdiction under 11 G. 4, and 1 W. 4, c. 65, s. 17, to lease an infant's estates, unless the infant is indefeasibly seised, either in fee or in tail, in *possession*. *In the matter of* 11 G. 4, *and* 1 *W.* 4, *c.* 65, *Exparte Legh*, 15 Sim. 445.

Case cited in the judgment: Evans, in re, 2 Myl. & K. 318.

2. *Custody of.*—Where the custody of an infant of 12 years of age is sought to be obtained by a parent, *Held*, that the wishes of the child as to his parental residence should be ascertained. *Langston* v. *Cozens*, 34 L. O. 420.

3. *Guardian.—Married woman.*—A *feme sole* being a guardian and trustee of a fund in Court for two infants subsequently married: *Held*, that the dividends of the fund might be paid to her on her sole receipt, the husband giving an undertaking that the money should be properly applied for the benefit of the infants. *Foster* v. *Macgregor*, 35 L. O. 538.

JOINT-STOCK COMPANY.

Fraud.—Bubble.—The defendants projected, *bonâ fide*, a railway in Spain; but, before the plaintiff purchased shares in it, they knew that it was impracticable.

Held, that the plaintiff was entitled only to the relief which he might have had if the project had been a bubble *ab initio*, namely, to be repaid his purchase-money. *Harvey* v. *Collett*, 15 Sim. 332.

LIEN.

Unstamped order. — Evidence.—An order signed by *A.* addressed to his bankers, directing them, out of the balance due to him on the final arrangement of his account, to pay to *B.* a certain sum, and which order was forthwith placed in the hands of *B.*, who, accompanied by *A.*, immediately proceeded to the banking house, and delivered it to the bankers: *Held*,

to be an instrument requiring a bill stamp, within the stat. 55 G. 3, c. 184.

Held, also, that although the intention of *A.* and *B.* was that the order should be forthwith delivered to the bankers, yet the fact that the order was, according to the agreement, delivered by *A.* to *B.* (the payee), brought it within the provisions of the Stamp Act, applicable to an instrument of that character.

That the agreement (according to which the order was made) gives *B.* a lien on the property of *A.* in the hands of the bankers, consisting of various shares and securities, on which the bankers had a prior charge for the amount of the advances made by them to *A.*, could not be established as separate from and independent of the order, treating the order merely as a notice of the agreement given to the bankers, but that the agreement must be regarded as giving *B.* only such a lien (if any) as the order created. *Parsons* v. *Middleton*, 6 Hare, 261.

MARRIAGE.

Fraud and collusion.—A marriage was solemnized between *A.* and *B.*, but it was declared void by the Ecclesiastical Court. Some years afterwards, a child of *A.* and *B.*, *en ventre sa mere* at the time of the sentence, and who necessarily was no party to the proceedings, claimed property in this Court as descendant of *A.*: *Held*, 1st, that he was bound by the sentence, though he might avoid its effect by showing fraud and collusion in obtaining it; 2ndly, that such fraud and collusion must be shown to have taken place between the parties to the proceedings; and 3rdly, that proof that the costs of the unsuccessful party had been agreed to be paid, that witnesses were not examined, and others not cross-examined, and that difficulties were not interposed which might have been, did not, together, amount to proof of fraud and collusion. *Quære*, whether, in such a case, the child, who was bastardized by the effect of the sentence, had any means of showing that the sentence was erroneous? *Semble*, not. *Perry* v. *Meddowcroft*, 10 Beav. 122.

See *Restraint of Marriage*.

MARRIAGE SETTLEMENT.

Creditor.—Bond.—Where a bond was executed in contemplation of a marriage and also a settlement, one of the provisoes of which was, that the trustees should stand possessed of all trust monies and securities in case the marriage should not be solemnized within 12 calendar months after the date of the settlement, in trust for *H. E. P.* absolutely, and the marriage was never solemnized, but the bond which formed part of the settled estate remained in the possession of the obligor until his death, he having written upon it the word "cancelled:" *Held*, that, on the administration of the obligor's estate, *H. E. P.* was not entitled, as *cestui que trust* of the bond, to come in as a creditor on the obligor's estate for the amount in the bond. *Mitford* v. *Reynolds*, 35 L. O. 360.

See *Infant*, 3.

MORTGAGE.

Repairs.—In a creditor's suit, the Court has no jurisdiction, under 1 W. 4, c. 47, and 2 & 3 Vict. c. 60, to extend the sum to be raised by way of mortgage by an infant, for payment of the debts of his ancestor or devisor, so as to include money required for repairs, even where such repairs are necessary in order to obtain an advance on mortgage, and where a mortgage is much more beneficial for the infant than a sale would be. *Hill* v. *Maurice*, 1 De G. & S. 214.

See *Priorities*.

MUNICIPAL CORPORATION.

Borough rate.—Past expenses.—The Court refused to interfere by injunction to prevent the levying under the Municipal Corporations Act of a borough rate, expressed to be made for current expenses, but apparently intended to be applied in discharge of past expenses, or to restrain the application of the sums already levied for such purposes. *Attorney-General* v. *Corporation of Lichfield*, 36 L. O. 408.

NUISANCE.

Gas-works.—Injunction to restrain the erection of gas-works in the vicinity of the plaintiff's residence refused, it being uncertain whether, upon the completion of the works, the manufacture of gas would prove a nuisance.

When a work is going on, which, though not in itself a nuisance, will manifestly end in operations presenting such a nuisance as this Court restrains, the Court will interfere at once. A motion for an injunction to restrain a contingent nuisance was refused: *Held*, by the Lord Chancellor, that the motion ought to be refused with costs, and not stand over. *Haines* v. *Taylor*, 10 Beav. 75.

Cases cited in the judgment: Crowder v. Tinkler, 19 Ves. 617; Attorney-General v. Cleaves, 18 Ves. 219.

OPENING BIDDINGS.

Deposit.—There is no absolute rule requiring the whole of the advance obtained when biddings are opened to be paid into Court. Therefore the Court was satisfied with 10*l.* per cent. upon the purchase-money in a case where that sum was amply sufficient to cover the expenses. *Manners* v. *Furze*, 36 L. O. 528.

PIER.

Railway.—The proprietor of a pier erected under the powers of an act of parliament, which were to be exercised during a certain limited period, was authorized by the act to demand certain specified tolls for the use of the pier when completed. By an agreement between him and a railway company, he agreed to complete his pier at a considerably earlier time than he was bound to do by the act, and the company agreed to complete a branch railway to the pier by the same time; but the agreement obtained no stipulation as to opening the pier or railway, or as to the terms on which the pier was to be used. The owner of the pier completed it accordingly, but refused to per

mit the railway company to use it, except upon terms to which the company declined to accede. The Court refused to grant on motion an injunction, restraining the owner of the pier from obstructing the use of it by the company at the statutory tolls. *Furness Railway Company* v. *Smith*, 1 De G. & S. 299.

PRIORITY.

Mortgagees of a ship.—Notice.—The owner of a vessel made a mortgage of it and of the cargo, in London, to *A.*, whilst the vessel was on a whaling voyage to the South Seas, subject to two prior mortgages thereof, and the third mortgagee gave notice of his mortgage to the two prior incumbrancers. The master of the vessel afterwards, putting into Sidney, trans-shipped the oil taken in the voyage to another vessel, consigned to the consignees in London, who honoured his bill of exchange on them, having a lien on the consignment. The mortgagor induced *B.* to advance him 1,000*l.* on a mortgage of the cargo so trans-shipped and consigned, without notice of any other charge thereon, except the lien of the consignee. *B.* gave notice of his mortgage to the consignee. *A.*, as soon as he knew of the consignment, (but subsequent to *B.*'s notice), gave notice to the consignee of the mortgage to him; and after such notice the consignee, after satisfying his own lien, paid over the balance of the proceeds of the oil to *B.*: *Held*, that *A.* having done all he could towards possession, was entitled to priority over *B.* *Feltham* v. *Clark*, 1 De G. & S. 307.

PROVISIONAL COMMITTEE.

Restraining action against.—A., being a provisional committee-man of a provisionally registered joint-stock company, was called on by a committee appointed to wind up the affairs of the company, to contribute his share towards the expenses. On his declining to do so, they, by arrangement with a creditor of the company, brought an action against *A.* in the name of the creditor, for the amount due to the latter. *A.* then filed his bill for, and obtained, an injunction to restrain the proceedings at law. On the coming in of the creditor's answer, admitting the above facts, but stating that the committee, who were suing in his name, would guarantee *A.* from all liability on his contributing 75*l.*, being his proportion of the expenses of the company, the Court continued the injunction on the terms of *A.* bringing that amount into Court. *Cutts* v. *Riddell*, 1 De G. & S. 226.

PURCHASE.

Payment into Court.—Possession.—Acceptance of title.—Upon a sale under the Court, an order upon the purchaser to pay his purchase-money into Court cannot be obtained, until the title has been accepted, or the Master's report obtained in its favour; and such an order, obtained before such acceptance or report, upon affidavit of service of the notice of motion, was discharged with costs.

Applications of purchasers to pay purchase-money into Court, and to be let into possession, without prejudice to objections to the title, are always refused. *Rutter* v. *Marriott*, 10 Beav. 33.

RAILWAY COMPANY.

Powers of.—Observations as to the extent of the powers given by railway acts.

The directors of a railway company, for the purpose of increasing the traffic, proposed to guarantee certain profits, and secure the capital of an intended steam packet company, who were to act in connection with the railway.

Held, 1st, that such a transaction was not within their powers, and they were restrained by injunction.

2ndly, That in such a case, one of the shareholders in the railway company was entitled to sue, "on behalf of himself and all the other shareholders, except the directors," who were defendants, although some of the shareholders had taken shares in the steam packet company. *Colman* v. *Eastern Counties Railway Company*, 10 Beav. 1.

See *Pier*.

RECEIVER.

1. *Conflicting interests claimed by receivers in different causes.*—A receiver appointed to get in property, part of which he finds in the possession of another receiver, ought not to take proceedings to deprive the latter of such possession, without the authority of the Court. *Ward* v. *Swift*, 6 Hare, 312.

2. *Disturbance of possession.*—A motion ought not to be made for committal on the ground of a disturbance of the possession of a receiver, when the object of the motion is merely to compel the payment of costs, after the question with respect to the possession of the property has been settled. *Ward* v. *Swift*, 6 Hare, 312.

RESTRAINT OF MARRIAGE.

A. covenanted with *B.*, a single woman by whom he had two children, to pay her, for her life, subject to the proviso thereafter contained, an annuity of 40*l.*: provided that if she should, at any time thereafter, happen to marry with any person, then the annuity should be reduced to 20*l.*

Held, that the proviso was void as being in restraint of marriage. *Grace* v. *Webb*, 15 Sim. 384.

SEPARATE ESTATE.

See *Feme Covert*.

SEPARATE USE.

Absolute interest.—In a settlement, trusts of stock were declared to be for several persons male and female equally, and as to each female, her share to be retained, and the income paid to her for her life for her separate use, and after her death upon trust for such person as she should by will appoint, and in default, for the executors or administrators, or other the personal representative or representatives of such female absolutely: *Held*, that each female was entitled to an absolute interest in her

share, and to a transfer of the same. *St. John* v. *Gibson*, 36 L. O. 53.

TENANT FOR LIFE.

Bonus.—Dividend.—For several years prior to 1846, an assurance company declared half-yearly dividends of 2*l.* 10*s.* per cent. on their stock, but, in that year, they declared a half-yearly *dividend* of 12*l.* 10*s.* per cent.: *Held*, that a tenant for life of their stock was entitled to the whole amount of the dividend. *Price* v. *Anderson*, 15 Sim. 473.

See *Waste.*

TRANSFER OF STOCK.

1. 11 *G.* 4 *&* 1 *W.* 4, *c.* 60, *s.* 10.—The survivor of four trustees of a sum of stock died intestate, and his sole next of kin refused to administer to him: *Held*, that the case was not within the 10th sect. of the 11 G. 4, and 1 W. 4. c. 60, and therefore, the Court could not appoint a person to transfer the stock. *Lunn's Charity, in re*, 15 Sim. 464.

2. *Trust fund.—Stat.* 10 *&* 11 *Vict. c.* 96.—A lady, whose title to a sum of stock depended upon there having been no issue of her marriage with her late husband, presented a petition stating that fact, and praying that the stock (which had been transferred into Court under the 10 & 11 Vict. c. 96,) might be transferred to her.

The Court, notwithstanding the petition was supported by affidavits, refused to make the order until the fact on which the petitioner's title depended, had been found by the Master. *In re* 10 *&* 11 *Vict. c.* 96: *in the matter of Trustees of Woods*, 15 Sim. 469.

TRUST OF GOODS.

Rights of drawers and acceptors of bills against such goods.—*R.*, the factor of *W.*, of *W.* and *K.*, of *W. K.* and *P.*, of *W. P.* and *C.*, and *W.* and *B.*, accepted bills drawn on him by *W.* and *P.*, they (*W.* and *P.*) agreeing that all the goods in *R.*'s hands, consigned to him by *W.* and *P.*, either solely or jointly, should be security to *R.* for the amount of his acceptances. *R.* sold the goods in his own name. *W.* afterwards became bankrupt, and the assignees of *W.* gave notice to the buyers of the goods not to pay *R.* the monies due in respect of such sale. All the debts owing for the goods were afterwards, by indenture, to which *R.* and the assignees of *W.* were parties, assigned to trustees, upon trust to apply the same as *R.* might legally do if the assignment had not been made. *R.* afterwards became bankrupt. The trustees having received the proceeds of the goods, filed their bill against the assignees of *W.* and of *R.*, for the direction of the Court in the execution of the trust. By the decree, the Master was directed to state what bills of exchange had been accepted against the goods, and the amount and particulars of such acceptances, and the amount unpaid, and for that purpose he was at liberty to publish advertisements. Under such advertisements several claims were made before the Master by *K.* and by other holders of the bills accepted by *R.* On further directions, *Held*,

That the bill-holders had no interest in the proceeds of the goods, except that which might arise from the result of the contract between *R.* and *W.* and *P.*; that, if there had been no bankruptcy, the bill-holders could not have sustained a suit to have the proceeds of the goods applied for their benefit; that the happening of the bankruptcies did not affect the equitable rights of the parties; that the doctrine of the case of *Exparte Waring* established a special mode for the payment of creditors, applicable to the administration of the estate in the bankruptcy, but not to the administration of the trust in equity; that the advertisements made under the decree, and which had caused the bill-holders to appear before the Master, gave them no right to appear; and that they were not entitled to appear on further directions; and that (the general account as between the estates of *W.* and of *R.* being waived by the respective assignees) the assignees of *R.* were entitled to recover the trust fund, and to administer it in that bankruptcy. *Laycock* v. *Johnson*, 6 Hare, 199.

Case cited in the judgment: Thompson v. Derham, 1 Hare, 358.

See *Charging Order; Transfer of Stock*, 2.

TRUSTS' ACT.

Surviving and deceased trustees. — Stock standing in the joint names of surviving and deceased trustees may be transferred by the survivors to the Accountant-General, under the "Trusts' Act," 10 & 11 Vict. c. 96. *Parry, in re*, 6 Hare, 306.

UNIVERSAL LEGATEE.

Relief on executors declining to sue for debt.—There may be circumstances under which the Court will, at the suit of universal legatees under a will, direct an account against a debtor to the testator's estate, without collusion being established between the debtor and the personal representative, or any evidence of insolvency on the part of the latter, or of his refusal to sue the debtor other than his omission to institute proceedings for a considerable time.

Quære, whether an honest refusal by an executor to institute a suit against a solvent person reasonably alleged to be equitably indebted to the testator, is sufficient of itself to enable the universal legatee of the testator to sue the debtor in equity, making the executor a party. *Barker* v. *Birch*, 1 De G. & S. 376.

WASTE.

Husband and wife.—Tenant for life.—A lady, tenant for life of an estate, subject to a condition not to commit waste, married; and, during the coverture, her husband cut and sold timber on the estate.

Held, (in opposition to the doctrine in *Lord Ormonde* v. *Kinnersley*, 5 Madd. 369,) that the condition was not of the nature of a trust, and, consequently, that neither the wife, nor her estate, but the husband alone, was answerable for the waste. *Kingham* v. *Lee*, 15 Sim. 396.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 23, 1848.

"——Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

NISI PRIUS SITTINGS.—ARREAR OF CAUSES.

THE Guildhall Sitting concludes this day, leaving a considerable arrear of Jury Causes in all the three Courts of Common Law. Many of those causes, still untried, are remanets from the Sittings after Trinity Term, and must now necessarily stand over until the third week of February. There was an arrear of equal magnitude of causes set down for trial in Middlesex, when the Sitting at Westminster Hall terminated, on the 9th instant. The inconvenience, expense, positive loss and practical injustice, occasioned by thus making remanets of a large proportion of the causes set down for trial at any particular Sitting, render the matter not undeserving the attention of government, at the same time that it peculiarly demands the consideration of the legal profession. It is a fact, for some time apparent, that whilst the number of causes for trial on the several Circuits gradually diminishes, the entry of causes in London and Middlesex has augmented. The alteration, we have reason to believe, is not to be ascribed to any general increase of this particular branch of Common Law business, but to the facilities afforded by railway communication, and the advantages, as well on the score of economy as in other respects, of trying a case of importance in the metropolis, rather than in an ordinary assize town.

Be the cause what it may, a formidable arrear exists both in Middlesex and London, and the means hitherto taken to prevent an accumulation of remanets have not been successful. Those best acquainted with its practical operation declare, that the experiment of holding continuous Sittings at Nisi Prius during Term, has been already carried somewhat further than is consistent with the convenient dispatch of what may be considered the regular and legitimate business of the Courts in Term time.

The duration of the Nisi Prius Sitting after Term, as most of our readers are aware, is regulated by the act 1 Wm. 4, c. 70, s. 7, which provides, that not more than twenty-four days (exclusive of Sundays) after Hilary, Trinity, and Michaelmas Terms respectively,—and not more than six days (exclusive of Sundays) after Easter Term, (such days to be reckoned consecutively after each Term) shall be appropriated to the trial of issues of fact in London and Middlesex. The number of days to which the Sittings are limited by this enactment are always fully occupied, and still the arrear cannot be kept down.

It does not appear probable that by any different arrangement of the legal year, the period allotted to Sittings at Nisi Prius after Term could be enlarged, without encroaching upon the periods appropriated to the several Terms and Circuits, and the season reserved for necessary relaxation and repose. The practical difficulty attending a different adjustment of the Terms was fully considered some two or three years ago, when the great inconvenience and ex-

pense of holding an Assize in Winter, for the purpose of a gaol delivery in the more populous counties, was pressed upon the attention of the government and the legislature. It was then proposed, that the interval between the Spring and Summer Circuits should be equalised, but the objections to such an alteration were deemed insuperable, and the project was reluctantly abandoned. If the number of days appropriated to the Nisi Prius Sittings after Term cannot be extended, and as the extension of the Nisi Prius Sittings during Term has not been found effectual in reducing the number of remanets, we can only suggest one remedy to keep down the arrear.

Let two Judges of each Court sit, after every Term, for the trial of issues of fact. One Judge may be confined to the Special Jury List, whilst the other is engaged in disposing of Common Jury Causes. By these means the whole number of causes tried after the Terms respectively, would be doubled, and the evil and injustice produced by delay effectually prevented. We may probably be told, that some of the leaders at the Common Law Bar accept briefs, as well in Common Jury as in Special Jury Causes, and that the contemporaneous trial of the two classes of cases would be attended with some inconvenience. It is apprehended, however, that this is an evil comparatively insignificant, and would soon cure itself. An objection, better entitled to consideration, is, that the proposed arrangement would impose an additional labour on the Judges, who, with attendance at Chambers, on the Circuits, at the Old Bailey, &c., are fully occupied in the intervals between the Terms.

It is clearly not for the advantage of the public, that the judges, or indeed any persons engaged in the administration of justice, should be overworked, and if the judicial strength is not adequate to the convenient dispatch of business, there seems no sufficient reason why an addition should not be made to the number of Judges. A spirit of short-sighted economy would, no doubt, suggest that the appointment of an additional judge to each of the Common Law Courts, must necessarily be attended with expense; but let any one, who has the opportunity, calculate the increased expense incidental to making a cause a remanet from the Sitting after Trinity Term to the Sitting after Michaelmas Term, and again from the Sitting after Michaelmas Term to the Sitting after Hilary Term, and he will find, upon a mere calculation of pounds, shillings, and pence, that the salary of an additional judge would not be lost to the community. The financial view of the question, however, is that deserving of the least attention. The bankruptcy, insolvency, and death of parties, and the incapacity or death of witnesses, constantly jeopardise rights, and produce consequences to litigants, which cannot be estimated by a money standard. Whilst the anxiety of the suitor is aggravated by the suspense, his uncertainty as to the result is increased by the postponement of the trial, and in many such cases the delay is the denial of justice.

PROVINCE OF THE BAR AND THE ATTORNEYS.

This subject, which some time ago was noticed in several provincial newspapers, and for several weeks has been under discussion in the legal periodicals, has recently also been brought before the public by a London journal, the old and respectable weekly paper *The Observer*, in which the case is properly put on the ground of the *general interest of the public*. In the number for the 11th December, the following article appears:—

"Considerable agitation exists among the junior Bar at this moment, on the subject of attorneys practising as advocates in Courts of Petty Session in the country parts of England; and an effort is, it is understood, about to be made to exclude them from this branch of practice—in other words, to confine them strictly to the exercise of their functions as attorneys. It has been alleged that the Bar, curtailed as it is of much valuable income, is bound in justice to itself to make every reasonable effort to retain that business which it possesses in its professional right; and that advocacy, in the usual and ordinary sense of the term, being limited in law, as regards all Courts, save County Courts, to members of the Bar, it behoves them, as much for the honour and dignity of the higher branch of the profession, as much for their own pecuniary advantage and interest, to maintain that limit, even at the cost of the exclusion of attorneys from this class of practice.

"The interests of the Bar as a body, are, without question, matters of grave concernment to the public, as well as to the profession of the law; and it is certain, that without qualified advocates, the administration of justice would be impeded, if not wholly denied. But the subject at issue is one that concerns *the general public* more, perhaps, than it does the legal profession; and to their interests, therefore, the journalist must more particularly attend in discussing this question. It is quite true that

the barrister is, and ought to be, the more learned in the law of the two; but it is also equally true, that some of the brightest luminaries of the legal profession were indoctrinated with law in the offices of attorneys. Hence there can be very slight doubt that the old attorney—the man who has followed his profession for a long period—is more than on a par with the junior barrister, fresh from a pleader's chambers, perhaps; or, it may be, only emancipated from an equity draughtman's office. Assuming this to be the case, who will contend that the one, and not the other, ought not to have the just preference of a client in a cause where there is no choice between the junior barrister, six months called, and the astute attorney conversant with all the intricacies of the class of practice to which it is necessarily referred. It may be all very well to say that each has his own distinct rights, and that as the barrister cannot act as an attorney, so the attorney should not act as a barrister; but so long as the Sessions' Courts are frequented by the tyros of the profession, on the one hand, and by the more able and respectable of the local attorneys, on the other, so long will the preemption of advocacy claimed by the former to the exclusion of the latter be held as a public grievance of a very grave and very irritating nature.

"In the County Courts the practice is, that any man may conduct the case of another; and it is found that the operation of these Courts has been quite satisfactory. Attorneys, for the greater part, manage the cases brought before the judges of these Courts, and yet there is no fault found either with their bills or with their advocacy; that is to say, generally speaking. But the causes decided in County Courts are much more numerous, and also much more important in the aggregate, than those decided at Petty Sessions; and it certainly does seem monstrous to make an attempt, at this time of day, to aggravate the costs of law by excluding attorneys from the smaller class of practice as advocates in the latter Courts. The privileges of the profession—of each branch of it—should undoubtedly be preserved in tact, in so far as *the public interest* is not impaired by their assertion and their existence; but when that comes to pass the privileges of either or both must yield to the general good.

"This is the predicament of the bar of England at present. The seniors of the profession will not practise in Courts of Petty Sessions; therefore the cases that are brought before these Courts are necessarily delegated to the junior members of that body—that is to say, strictly and legally speaking. But on the other hand, a custom has grown up in these Courts, by which attorneys are permitted to act as advocates for their clients; and as these individuals, in nine cases out of ten, are better lawyers than young barristers, the public prefer to employ them. The only question, then, for solution is this: *are the interests of the public to be sacrificed to the privileges of the bar?* The most bigoted lawyer that ever lived would not presume to recommend the adoption of this alternative. When junior barristers shall have become more learned in the law than experienced attorneys, then, and not till then, will the public be satisfied with the substitution of the one for the other, in cases of law-suit which require only a moderate degree of advocacy. In Ireland attorneys practise as advocates at Quarter Sessions as well as at Petty Sessions, though the Irish bar is abundant in seniors as well as juniors of great ability. Why it should be otherwise in this country is a question difficult to answer, especially as their advocacy in most instances gives the greatest satisfaction to their clients and the public."

We deem it important that the question which has been raised by a member of the Bar, relative to the *right* of attorneys and solicitors to practise in the Bankruptcy Courts, should be set at rest. There are many eminent practitioners who will not expose themselves to the humiliation of acting only on *sufferance*, and indeed it is manifest that a gentleman who appears before a legal tribunal, in behalf of his client, cannot independently and fearlessly discharge his duty, if he may at any moment be stopped by the interposition of the counsel opposed to him, or by the will of the presiding Judge. Let him possess the acknowledged right to represent his client, and we doubt not that he will exercise it with due discretion.

In our first notice of the article in the *Law Review*, on the Province of the Bar, we observed, "that the learned editor appeared to have permitted some correspondent or contributor to descant on a subject for which he seemed not to have sufficiently prepared himself," particularly in regard to the *right of attorneys to plead in the Bankruptcy Courts*. We gave this intimation in justice to the editor of the Law Review, because this was the first occasion on which there had been any attempt in his work to limit the rights and privileges of attorneys: on the contrary, we have frequently observed that the station and character of the larger branch of the profession have been very justly and fairly considered. For instance, at an early period of the work, in the proposal to reform the system of the Inns of Court, and establish a general "*University* of the Law," it was recommended that the Inns of Chancery, consisting of attorneys and solicitors, should form part of the establishment; and that the Principals or treasurers of those minor Inns should become members of the governing body of the University. Vol. 1, p. 352. In the last number of the *Law Review*, in

the article upon Mr. Warren's lectures, we have the following passage :—

"If attorneys and solicitors, men of practice, gain by lectures, much more certainly will the same object be obtained when the recipients of instruction have wider views and higher aims. The objection usually taken to lectures is, that they cannot of themselves make men of business. Hence it is that 'students for the Bar,' immediately on quitting the University, are put to copying precedents with conveyancers, pleaders, or equity draftsmen. No reasonable being desires to alter this ancient and well-approved system. But the question is, whether lectures ought not to be superadded? The great body, for whose benefit Mr. Warren's work has been prepared, and who owe a debt to the author, have answered this question by their own triumphant experience. Those sagacious individuals, who are wiser in their generation than the children of light, saw, upwards of twenty years ago, the necessity which had come for setting their house in order. With the sanction of the Judges and Parliament, indeed, but without collateral aid or endowment of any kind, they have, entirely out of their own funds, erected a great and prosperous institution, for the better government of their society, and the more liberal culture of its junior members. The good which this establishment has already effected, in the way of superintendence and control, is probably but little, when compared with that which may be expected hereafter to flow from it. We do not say that the Inns of Court have been inattentive spectators of these proceedings on the part of the attorneys and solicitors; but we pray them to remember, that to whom much is given, from them also something is expected; and that it is not enough for men who hold large possessions upon the express trust of legal education, to follow tardily, not to say reluctantly, in the wake of those to whom nothing was given, but who have themselves given everything."

This is eloquently and liberally said in favour of the attorneys, and we think we are called upon to place these extracts before our readers, lest any one might suppose that the able editor, as well as other writers in the Law Review, entertained the restrictive views of the author of the article on "the Province of the Bar." We are persuaded that the learned gentleman to whose lucubrations we have taken exception, does not represent the general opinion of his brethren of the Bar who are engaged in promoting the amendment of the law.

It is proper to observe, that in our allusion (at the close of the article in our last number, p. 127,) regarding the *acceptance of Briefs by the Bar without the intervention of Attorneys*, we had in view, not the Law Review, but an article in the *Law Times* of the 18th November, and which we noticed in the following week, p. 63. We refer on this subject to the next article on "the Old Bailey Bar."

The following Letter on the *Bankruptcy* Court question, is from a Correspondent at Liverpool :—

To the Editor of the Legal Observer.

SIR,—In the discussion which is now being carried on in your columns, with respect to the right of Solicitors to practise and plead in the Bankruptcy Courts, I think some very material points have escaped consideration, and which I will endeavour to explain. In the first place, I shall put out of view (for argument sake) the solicitors' rights under 1 & 2 W. 4, c. 56, s. 10, and 6 & 7 Vict. c. 73, s. 27, and shall then consider their rights under those statutes.

1st. It is contended by your Correspondent, "Province of the Bar," that independently of an express statute, an attorney or solicitor is not legally invested with the character of advocate, even in the Bankruptcy Courts. Now, without admitting that the right of the Bar to act as advocates extends at all to *Inferior* Courts, which is debateable, I contend that the duties which devolve on a solicitor in the Bankruptcy Courts are far from universally those of an advocate; on the contrary, they are chiefly *ministerial*, as any one conversant with bankruptcy business well knows. It would seem rather anomalous to see learned counsel conducting the opening of the fiat—the appointment of assignees—the proof of debts, &c., and all the numerous discussions and arrangements not only with the commissioner but also with the assignees, creditors, and others, incidentally arising out of these matters which it would be impossible previously to instruct counsel upon or anticipate, but with which the solicitor, from his general knowledge of the facts, and the feelings and interests of his clients, would be able at once to grapple. It is true that in the case of an application for or opposition to a bankrupt certificate, and a few other cases in the Bankruptcy Courts, the solicitor acts purely as an advocate; but these are exceptions, not the rule.

As then the duties are of the mixed character which I have described, and mainly consist of those which your correspondent would admit are within the province of the solicitor, I think the fairness and good policy of the 10th section of 1 & 2 W. 4, c. 56, will hardly be denied by the Bar generally.

The saving of expense to the client, and other considerations, might be urged in support of the policy of the statute.

2ndly. As to the attorneys' statutory rights to appear, plead, and practice in the Courts of Bankruptcy.

It appears to me, as I have before intimated to you, that the 27th section of 6 & 7 Vict. c. 73, whereby it is enacted, "That every person who shall have been duly admitted a solicitor

in the High Court of Chancery shall be admitted as a solicitor in any Inferior Court of Equity, and in the *Court of Bankruptcy*, upon signing the roll of such other Court, and shall thereupon be entitled to practise *therein*," &c., does not apply to the District Courts of Bankruptcy, established under 5 & 6 Vict. c. 122, but solely to the Court of Bankruptcy established under 1 & 2 W. 4, c. 56. You seem to think that *the* Court of Bankruptcy may fairly be taken to comprehend all Bankruptcy Courts. With great deference to your opinion, I believe the general impression is in accordance with mine. I can answer for a Bankruptcy Commissioner and several eminent solicitors.

If I am correct in the construction of the 27th section of 6 & 7 Vict. c. 73, that the right conferred by it applies only to the London Court of Bankruptcy, the right of the solicitors in the provinces to practise in the District Courts of Bankruptcy is unprovided for by statute.

In the case of the London Court, the 6 & 7 Vict. c. 73, expressly confers upon solicitors signing the Roll of that Court, the right to practise therein as a solicitor; but it seems to me, after a careful consideration, extremely doubtful whether that statute has repealed that portion of the 10th section of 1 & 2 W. 4, c. 56, which gives solicitors the right to appear and plead in any proceedings in the last-mentioned Court, without being required to employ counsel.

Under all the circumstances, is it not manifestly desirable that the metropolitan and provincial solicitors should unite in obtaining, during the next Session, a declaratory act to obviate all doubts as to their right to appear, plead, and practise in every Court of Bankruptcy? W.

THE OLD BAILEY BAR AND SIR PETER LAURIE.

THE gentlemen practising at the Old Bailey Bar have no reason to feel particularly indebted to Sir Peter Laurie, for the charitable and respectful interpretation he has put upon their addresses and gestures. According to the worthy alderman's statement, many of the counsel practising at the Central Criminal Court, direct their addresses to young thieves sitting in the galleries, in the expectation that these admirers of forensic eloquence are likely hereafter to become clients. This astounding announcement was made at a recent meeting of the Court of Common Council, upon the consideration of the question, whether the Lord Mayor should continue to participate, with the Sheriffs and Sword Bearer, in the profits derivable from the admission of the public to the galleries of the Central Criminal Court at sixpence a-head. As we are desirous not to misrepresent Sir Peter Laurie, or to put any construction upon his language which the terms in which his sentiments are conveyed do not fully justify, we subjoin the report of his observations, as copied from the daily newspapers :—

"Sir Peter Laurie said, he was decidedly of opinion that it would be a great public benefit to exclude the public from the galleries altogether. Young thieves were induced to go to hear the speeches of counsel for their friends at the bar, and nothing was more calculated to deprave their minds. He had often, while reluctantly attending the Court, observed the galleries filled with persons, to whom many of the counsel directed their ingenious addresses, as likely to become their clients. He would not hesitate to say, that he had often heard counsel recommending themselves to their future clients, in the way he had described. Now, in the Court in which Mr. Bullock presided, there was no gallery, and as there could, of course, be no future clients present, the speeches of counsel were all short, the gentlemen of the jury not being such admirers of eloquence as the young candidates to whom he alluded."

Far be it from us to countenance or assent to the scandalous imputation conveyed by these observations against a portion of the Bar. Sir Peter Laurie talks too much upon subjects in respect of which he is manifestly but imperfectly and superficially acquainted, to render it possible that any considerable part of the public would rely implicitly on his statements, or be influenced by his opinion, upon a matter of this nature. We are induced to direct attention to this scurrilous and unfounded attack, chiefly as a caution to those who absurdly imagine that they are advocating the peculiar privileges of the Bar, when they suggest, that it might be expedient for barristers to act as advocates without the intervention of attorneys. The practice notoriously prevails at the Old Bailey Bar, of accepting briefs from prisoners, who do not communicate with counsel through the instrumentality of attorneys. If this practice did not exist—if the counsel was in every case necessarily selected by the attorney—no one could, with even a shadow of truth, suggest, as Sir Peter Laurie does, that the barrister plays to the gallery, for the express purpose of catching a client on his way to the penitentiary or the hulks.

In this, as in every other case, it will be found that the honour and character of the Bar, as well as the interests of the public, would be materially compromised by any attempt to encroach upon the field at present occupied by the larger branch of the profession.

PRACTICE OF RETAINERS.

At a Special General Meeting of the Members of the Incorporated Law Society, held in the Hall of the Society, Wednesday, 29th November, 1848,

BENJAMIN AUSTEN, Esq., *President*, in the Chair,

The following Report of the Council of the Society was read :—

In the Annual Reports of the last year and of the year preceding, the Council noticed the various communications which they had received on the doubts and difficulties consequent upon the unsettled and unsatisfactory state of the Practice with respect to Retainers, and which had given occasion to frequent differences, not only between Barristers and Attorneys and Solicitors, but between Attorneys and Solicitors themselves.

The attention of the Council was accordingly directed to this very important subject, with a view to the establishment of such Rules as might in all ordinary cases enable the Practitioners to regulate their proceedings on behalf of their Clients.

In the first place, they considered it necessary to ascertain, as accurately as possible, what was the actual practice, so far as it could be collected from those members of the profession who, from long experience, were most conversant with the subject.

After great deliberation, a Series of Questions was prepared, and, on the 28th January, 1847, was settled, printed, and circulated among the Attorneys and Solicitors of London, who were invited to give the required information,—to point out any inconvenience which they had experienced from the existing practice, and to suggest means for improving it.

The Council received numerous answers to their inquiries, which were carefully arranged and digested. In the result it appeared, 1st, that comparatively few points in the practice were clearly settled and uniformly acted upon; 2nd, that there were others which, although well known amongst practitioners, and generally complied with, were highly objectionable and inconvenient; and 3rd, that there were many of so doubtful a nature that Attorneys and Solicitors differed widely upon them.

From the materials thus collected, and their own professional experience, the Council prepared a Series of Rules for the guidance of Attorneys and Solicitors in retaining Counsel; and, with a view to obtaining the concurrence of the Bar, they, on the 6th May, 1847, submitted these proposed Rules to all the Judges of the Superior Courts, to the Attorney-General, the Solicitor-General, the Queen's Serjeants, the Queen's Counsel, the Serjeants-at-Law, and the Benchers of the several Inns of Court.

In reply to this communication, the Council, as stated in their last Report, were favoured with some valuable suggestions from two gentlemen of great eminence at the Bar, which were most carefully considered, and for the most part adopted.

No further suggestions having been received from the Bar, the Council, on the 6th April, 1848, forwarded a printed copy of the proposed Regulations to every Member of the Society, to every practising Attorney and Solicitor in London, and to all the Law Societies in the country, inviting the favour of their sentiments upon them,—stating it to be the anxious wish of the Council that Rules designed to regulate the practice on this important subject should be rendered as perfect as possible, and be adopted with the full concurrence and approbation of both branches of the profession.

The Council have received several communications and suggestions from Attorneys and Solicitors in answer to their last circular, to which they have given their best attention, and have convened the present Meeting of the Society for the purpose of taking into consideration the proposed Rules, with a view to their adoption by the profession.

(Signed) B. AUSTEN, *President*.

It was moved by the President, seconded by the Vice-President, and resolved unanimously,—

I. That it is highly expedient that the present uncertain and variable usage relating to Retainers of Counsel should be reduced to certainty, by the establishment of a series of intelligible Rules, whereby the interest of the Suitor, and the convenience of both branches of the profession may be consulted and secured.

II. That the Rules of Practice now read are fair and equitable, and calculated to promote those important objects, and that they be approved and adopted.

III. That the Members of the Society now present engage to adhere strictly and invariably to such Rules of Practice in the Retainer of Counsel, and that such members do signify their adhesion by inserting their names in the book now produced for that purpose.

IV. That all absent Members of this Society, and Attorneys and Solicitors in general, be earnestly invited to adopt the Rules, and sign the book before referred to, and that such book do lie in the Office of the Secretary for the purpose of receiving signatures.

V. That in case of any difference of opinion regarding the construction of such Rules, or the practical application thereof, in any case occurring between Members of the Society, the question be stated in writing, and submitted to the determination of the Council of the Society, whose decision shall be final.

VI. That in case of any such difference between Attorneys or Solicitors, not being Members of the Society, they be recommended to consent to refer the matter in difference either to one of the Taxing Masters of the Superior Courts of Law or Equity, or to the Council of this Society, and in all such cases to abide by the decision.

VII. That these Resolutions, together with

the Report of the Council, this day made to the Society, be printed; and that copies of each of those documents, and of the Rules adopted, be sent to the Judges of the Superior Courts, to the Attorney-General, the Solicitor-General, the Queen's Serjeants and Queen's Counsel, the Serjeants-at-Law, the Benchers of the several Inns of Court, to each Member of this Society, and to the Metropolitan and Provincial Law Societies;—And that the Council be requested to take such further measures as they deem requisite to procure assents to the Rules.

RULES OF PRACTICE RELATING TO THE RETAINERS OF COUNSEL,

Adopted unanimously at a Special General Meeting of the Incorporated Law Society, held in their Hall on Wednesday, the 29th November, 1848.

General Retainers.

1. That a general Retainer applies to all Courts in which the Counsel receiving it shall practise.

2. That if the Counsel should be offered a special Retainer by the opponent of the party having given such general Retainer, in any other Court than that in which he shall usually practise, the general Retainer entitles the party giving it, to notice before the offered Retainer is accepted.

3. That the general Retainer lasts for the joint lives of the Client and Counsel; or so long as the Counsel continues in practice, except it be lost, according to any of these rules.

4. In case a special Retainer or Brief is offered to Counsel against the party who has given a general Retainer, the Counsel is at liberty to accept the special Retainer or Brief of the other party, unless within one week after issue joined, or replication filed, a special Retainer or Brief be given by the party who gave the general Retainer.

5. Where a general Retainer has been given, and a Brief is not delivered to the retained counsel in any action, suit, or other proceeding, in which the party giving the general Retainer is concerned, (and pending in the Court wherein the Counsel usually practises,) the general Retainer is entirely lost, unless in cases where a Brief is given to a junior Counsel only, and the services of the retained counsel appear unnecessary to the retaining solicitor.

6. Where a general Retainer is given for one person, and he is sued with others, and he defends separately, the Retainer is binding; but it is otherwise if he defend jointly.

Corporation and Partnership Retainers.

7. Subject to the foregoing rules, a general Retainer given for a corporation will continue, unless the corporation be dissolved, or the grant of a new charter be accepted.

8. When a general Retainer is given for a partnership or firm, it continues so long as the style of the partnership or firm continues, and extends to all matters affecting the partnership, notwithstanding all the partners may not be included in the action or actions brought.

9. A general Retainer may be given for a provisional committee in respect of any subject of action or suit by or against such committee, or any member or members of it, arising out of the concern in which they are provisional committee-men.

Special Retainers.

10. A special Retainer may be given as well before, as after, the commencement of an action at Law, a suit in Equity, or a proceeding in Bankruptcy.

11. A special Retainer gives the client a right to the services of the Counsel during the whole progress of the cause, including interlocutory applications, and bills of exception and rehearings.

12. The retained Counsel is entitled to a brief on every occasion in which the case is brought before the Court in which he usually practises, except where the services of the junior Counsel only appear to the retaining solicitor necessary.

Circuit Retainers.

13. A special Retainer in a country cause must be given for a particular assize.

14. If the venue be changed for another place on the same circuit, a fresh Retainer is not required.

15. If the cause be not tried at the assize for which the Retainer is given, the Retainer must be renewed for every subsequent assize until the cause is disposed of, unless a brief has been delivered, and then the usual refresher fee is sufficient.

16. A Retainer may be given for future assizes, without a Retainer for the intervening assizes, unless notice of trial shall have been given for such intervening assizes.

17. Where a renewed Retainer is necessary, it must be given before the end of the term preceding the assize.

18. In any case requiring the renewal of a Retainer, an adverse Brief or Retainer cannot be accepted without notice to the original client.

Appeals, Writs of Error, and Nonsuits.

19. A special Retainer, in an appeal or on a writ of error, may be given before the appeal has been lodged or the writ of error issued.

20. Counsel in the original cause cannot accept a Retainer on an appeal or writ of error for the opposite party, without affording the Client in such original cause the opportunity of giving such Retainer.

21. After a nonsuit, a Retainer cannot be accepted from the adverse party in a second action, without notice to the client for whom a Brief has been held in the first action.

Opinions and Pleadings.

22. Where Counsel has drawn pleadings or advised, during the progress or in contemplation of an action or suit, a Retainer cannot be accepted from, or pleadings drawn for, or

advice given to, the opponent, without notice to the first client.

Promotion of Counsel.

23. The Retainer of a Counsel does not cease upon his being promoted to a higher rank at the Bar.

Form of Retainer.—Notice.

24. When a Retainer is given by the plaintiff in a cause *A.* v. *B.*, and an action or suit is afterwards brought by *B.* v. *A.*, the Counsel cannot take the Retainer of *B.* without notice to *A.*, if the causes of action are connected.

25. A mistake in the title of an action or suit does not render the Retainer inoperative, if it can be shown that the cause of action or suit is the same, and that there is no other to which the Retainer can apply.

26. The notice to the Client mentioned in these rules is intended to afford him an opportunity to give a special Retainer to Counsel.

Amount of Fees.

27. The fees given for *general* Retainers are as follow:—

In the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas, 5*l.* 5*s.*
In Chancery and Bankruptcy Appeals, 5*l.* 5*s.*
In Bankruptcy, 5*l.* 5*s.*
In Parliament, 10*l.* 10*s.*
In the Privy Council, 10*l.* 10*s.*

28. The fees given for *special* Retainers are as follow:—

At Common Law and in Equity, 1*l.* 1*s.*
In Parliament, on Bills and Election Committees, 5*l.* 5*s.*
In Appeals to the House of Lords, 2*l.* 2*s.*
In the Privy Council, 2*l.* 2*s.*

COPYHOLD ADMISSIONS AND STAMPS.

To the Editor of the Legal Observer.

SIR,—Your correspondent R. R. seems to have forgotten that by section 88 of 4 & 5 Vict. c. 85, the lord of any manor, or his steward, or the deputy steward, may admit at any term, and at any place, within or without such manor, and without holding a Court for such manor.

A person was recently admitted as heir after the first proclamation, at a place out of the manor, and without holding a Court for such manor, and the form of admittance was as follows:—

Manor of } At the office of *A. B.*, situate at in the county of on the day of , 1848.

Whereas at the last General Court Baron held for this manor, the homage thereof did present that *C. D.*, a copyhold tenant of this manor, died since the then last Court, seised of certain hereditaments and premises holden by copy of Court Roll of the manor; whereupon, at that Court, the first proclamation was made for want of a tenant, but no one came to be admitted. Now, at the place and time first above-written, cometh *E. D.*, of the only child and heir, according to the custom of this manor, of the said *C. D.*, before *F. G.*, of gentleman, the steward of *H. I.*, Lord of this manor, and prayeth to be admitted tenant to the hereditaments and premises, whereof the said *C. D.* died seised, as his right and inheritance, (*i. e.*,) to one piece of land, &c., (which premises the said *C. D.* had and took up to him and his heirs at a General Court Baron held for this manor, on the day of under the will of .) to which said *E. D.*, the said steward, by virtue of the power given to and now vested in him in and by an act of parliament passed in the fifth year of the reign of her present Majesty Queen Victoria, intituled "An Act, &c.," doth, at the place and time first above-written, grant and deliver seisin of the said hereditaments and premises by the rod. To hold the same with the appurtenances unto the said *E. D.* and his heirs, of the lord, by copy of Court Roll, at his will and according to the custom of this manor, by fealty, suit of Court, and other the rents, duties, and services therefor due and of right accustomed, and saving the rights of the lord, the said *E. D.* is admitted tenant of the said hereditaments and premises, and pays on such his admittance a fine, &c., but his fealty is respited until, &c."

I shall be much obliged by your correspondent R. R. informing me whether the above form is a good one.

As to the stamps on admission, if your correspondent, "A Steward's Clerk," will refer to the schedule of the Stamp Act, 55 Geo. 3, c. 184, he will there see that stamps are imposed upon surrenders made out of Court upon admittances out of Court upon copies of Court Roll of any surrender made in Court, and upon copies of Court Roll of any admittance in Court; there can be, therefore, no doubt but that the stamps on admissions out of Court must be on the admittances themselves, and not on the copies.

E. C. E.

STAMPS ON COPYHOLD ADMISSIONS.

With regard to the observations of R. R., 36 L. O. 504; the 4 & 5 Vict. c. 35 (although it authorizes certain acts out of the manor and out of Court) does not authorize the steward *to hold a special Court out of it*, and it was on such a consideration the former observation was made to you. There can be no objection to state in the entry on the roll the value of the stamp affixed to the admission; indeed it may be preferable to do so.

As to the observations of "A Young Steward," I consider that if the *admission itself* is stamped, all fraud is prevented; whereas, if the short irregular memorandum of admission is unstamped, a door would be open to fraud, and the copy from the Court Rolls might never be impressed with the duty at all.

Having inadvertently forwarded an entry of

a surrender instead of an admission, I now subjoin a form comprising the latter.

CIVIS.

Manor of } Be it known that
in the county of }
tenant of this manor was on the day of 1848, admitted tenant out of court to the hereditaments and premises, whereof died seised, and that the said having on the same day made a surrender out of court of the said hereditaments to which he was so admitted tenant as aforesaid, to the use of ( ) of ( ) in the county of , Esq. And the said having in pursuance thereof on the same day been admitted tenant out of court to the hereditaments and premises comprised in such surrender, the duly stamped memorandum of such surrender and admission, and respectively made and signed at the time at which the same respectively purport to have been made, are now forthwith afterwards entered word for word in this book, containing the court rolls or entries of the said manor, pursuant to the statute in that case made and provided, that is to say,

( )

PALACE COURT PRACTICE.

To the Editor of the Legal Observer.

SIR,—My attention has been directed to a letter in your last week's journal, bearing the signature of "One of the Six Attorneys" (of the Palace Court,) and written in reply to that which I addressed to you on the 9th instant; pray allow me a brief space in your columns, that I may comment upon your correspondent's communication.

Its author is evidently an intelligent and upright man, who feels a due regard for his own character and the honour of the Court in which he practises—in one word, he is a gentleman. Since his letter was addressed to you, I have had an interview with him, and, after having listened to my statement, and canvassed it in all its details, he frankly avowed that I had said and done nothing throughout this business which he himself would not have done and said, had our situations been reversed. I convinced him, as I shall, I think, convince your readers, that he had judged Mr. *Z.* too leniently; as to the behaviour of the "representative," we were both agreed that it was below every thing, except contempt. The affair was, in all probability, as your correspondent has suggested, "originally an agency matter," and Mr. *C.*, of Clement's Inn, whose name, by the way, does not figure in the Law List, may, for aught I know to the contrary, have been "the attorney properly concerned;" I am, moreover, willing to concede that it is possible no intimation was given by him to Mr. *Z.*, that he had been in previous communication with me. Sir, I doubt this, but, assuming for a moment that such was the fact, how does that palliate the conduct of Mr. *Z.*? Your correspondent says, "had this been the case, Mr. *Z.* would have written to 'Legalis,' and requested him to have named some solicitor of the Court who would have received process on his behalf;" for, continues he, "this occurs every day, and I am sure that it is my own practice, as well as that of my brethren," &c., &c. Now, Sir, begging your correspondent's pardon for the familiarity, let me remind him that his reasoning involves what the logicians term a "*non sequitur*," granting, as the fact no doubt is, that he, and others of his fraternity, act invariably with good faith and courtesy, does it therefore necessarily follow that Mr. *Z.* and his "representative" do the like?

Let your correspondent refer again to my letter, and he will find that all he has told you respecting his mode of practice, has been already described by me as the course of conduct adopted by my own adviser in the Palace Court, and by "others of his brethren;" indeed, but for the liberality of some "one of the six attorneys," how could my friend Mr. *A.* and I be heard in our defence at all? To put the matter beyond dispute, however, let me reiterate that, when I first called in Clifford's Inn, I mildly expostulated with Mr. *Z.* and his representative, and believing it quite possible that the writ had been issued and served on Mr. *A.* in the open street, in consequence of some misapprehension, (accidents will, we all know, sir, occur during the hurry of practice, even in the best regulated offices,) I *twice* offered, on the part of Mr. *A.*, to accept any expression of regret which the wrong-doers might think fit to tender; I particularly stated that I did not wish for a humiliating apology; but such an explanation as a *gentleman*, who has been in error, always frankly and immediately tenders, and which the injured party, if a gentleman, will at all times readily receive. A moment's reference to my former letter will demonstrate the manner in which my courtesy was requited.

I should observe, however, that though the conduct of Mr. *Z.* has, throughout this business, been most reprehensible, he has at all events abstained from impertinence; not so his subordinate; the fact is, that had this person been satisfied with victimizing without insulting us, Mr. *A.* and I, would in all probability have submitted to his extortion, and troubled ourselves no further about the matter. But, sir, when "Calibans"—to whom decency of demeanour is unknown and whom, as Prospero well expresses it: "stripes may move, not kindness,"—presume to add insolence to deliberate imposition,—when they have the additional effrontery to bid us "make their conduct public at our peril," they must be made to feel, that although their "insignificance" may very probably be "the best friend they have," even their insignificance will not always save them.[a]

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[a] "*Don Ferdinand to Isaac.*"—("Cunning Isaac"—the sharp practitioner; his "aunt's

As to the filing of the "declaration" under the circumstances I have already detailed, whether it was as your correspondent would good-naturedly have us think it, "the result of forgetfulness," or whether it was, as I have already characterized it, and firmly believe it to have been, a flagrant and deliberate breach of faith, it is quite certain that "the costs ought not to be inflicted on the defendant." I am, sir, sincerely obliged to your correspondent for the trouble he has already taken, and the valuable assistance he has offered me; I have thanked him in private, as I now do publicly, for his letter, and but that the matter is in the hands of another of "the six attorneys," a gentleman equally intelligent and honourable with your correspondent, and that is saying a good deal, I would unquestionably have availed myself of his interposition—as matters stand, I decline, but very thankfully, his offered courtesy "*coram judice, lis est.*" Mr. *A.* and I have been deliberately insulted and defied; we despise the insult, the defiance we accept; the Palace Court must be the arena, and the public judge between us: whether, however, we succeed or fail in convincing a jury, that the 11*l.* 4*s.*, which he originally demanded, is all that is due to Mr. *B.*, (the house-agent), the conduct of Mr. *C.*, of Clement's, and Mr. *Z.*, of Clifford's Inn, will not be rendered the less disreputable;—sharp practice and deliberate breach of faith are alike disgraceful when they succeed and when they fail.

My present agent, prompted by his own kindly feeling, and with my full acquiescence, has given these people every opportunity of apologizing for their misconduct. I myself, when I originally applied to the Council of the Law Institution, sent by the same post a transcript of my letter to Mr. *Z.* Your columns would, I am quite sure, be open to him, should he now or hereafter have anything to plead in the way of extenuation. Let the profession decide. I disclaim all private animosity against these parties: Mr. *C.* I never saw; Mr. *Z.* I never beheld but once, for about 20 seconds, when he abruptly, yet not uncivilly, referred me to his subordinate; my acquaintance with the last-named individual has not progressed since the two interviews took place which I have already detailed,—it is not very likely that he and I should ever move in the same circles of society; yet, as even with him I would, if possible, part in peace and without unkindliness, let me take this opportunity of suggesting that, though I do not myself either expect or desire him to behave like a gentleman, for I am not Utopian, and am well aware that "*impossibilitas excusat legem*," he will act discreetly if he for the future abstains from vulgar flippancy and gratuitous impertinence, either in his daily intercourse with his ordinary companions, or in any casual conference he may for a moment hold with

LEGALIS.

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little Solomon," &c. &c.) Sheridan's *Duenna*, act 3rd, scene 3rd.

NOTES OF THE WEEK.

REPORTED RETIREMENT OF MR. JUSTICE PATTESON.

THE rumour has obtained very general circulation throughout the profession, that Mr. Justice Patteson has expressed an intention of retiring from the Bench, at no very distant period. No individual has left the profession, within our recollection, who will take with him a larger share of public and private esteem and respect. His eminent qualities as a judge are only equalled by his estimable qualities as a man.

PRESIDENT OF THE POOR LAW COMMISSION.

We are glad to have an opportunity of announcing, that Mr. M. T. Baines, one of her Majesty's counsel, and the member for Hull, has been appointed to the important and responsible office of Head of the Poor Law Department, in the place of the late lamented Mr. Charles Buller. Mr. Baines was called to the Bar in the year 1825, and filled the office of Recorder of Hull for several years, and until he became a representative in parliament for that town.

MEETING OF PARLIAMENT.—LAW REFORM.

The House of Lords met on Wednesday last, the 20th instant, when the Lord Chancellor, Lord Langdale, and Lord Campbell, took their seats as Lord Commissioners, and the parliament was prorogued till Thursday the 1st day of February next, when it will "assemble and be holden for the despatch of divers urgent and important affairs."

Amongst those important affairs we may anticipate the usual quantum of attempted Law Reform. The Court of Chancery and "its expensive and dilatory proceedings" will probably come under early discussion; so will the Law of Bankruptcy and Insolvency, and possibly also the "Burthens on Real Property" and the present mode of Conveyance, including a General Register of Deeds. The regulation of Charitable Trusts will perhaps likewise be resumed.

ATTORNEYS TO BE ADMITTED.

Hilary Term, 1849.

Queen's Bench.

Clerks' Names and Residence.	*To whom Articled, Assigned, &c.*
Atkinson, Anthony, jun., Beverley	John Blythe Robinson, Beverley
Andrews, Stephen Wilson, 8, New Inn, Wych-street, Strand; Boston; and Albert-street	Francis Thirkill White, Boston
Annesley, George, 10, Duke's-road, Wribbenhall; and South Molton-street	Robert Acton Pardoe, Bewdley
Ash, Thomas, 11, Connaught-terrace, Hyde-park; and Glastonbury	Stephen Holman, Glastonbury
Allen, William Simmons, Handsworth; Hampstead-road; Northumberland-street, Strand	William Morgan, Birmingham
Armfield, George Mander, 23, The Terrace, Kennington-common	Richard Henry Tarleton, Birmingham
Andrews, John, 21, Upper Gower-street; Park-terrace, Battersea; and Commercial-road	William Martin Wilkinson, Lincoln's-inn-fields
Allwood, Alfred, Foxton-terrace, Islington; Manchester; and Astley, Lancaster	John Mackinson, Manchester
Blake, Alfred Godby, 79, Blackfriars-road; and Croydon	Frederic Buckle, Wellington; J. J. Blake, Blackfriars-road
Bullen, Robert Hockley, Bampton	James Rose, Bampton
Burgon, William, 14, Goulden-terrace, Islington	William Pashley Milner, Sheffield
Blackmore, William, 2, New Inn; and 9, Montague-place, Islington	John Lambert, Salisbury
Bishop, Paul John, 21, Howland-street	John Bishop, 23, New Bridge-street, Blackfriars-road
Bickers, Thomas Linley, Tadcaster; and George-street	James Upton, Tadcaster; John Wilkinson Maude, Tadcaster
Batley, Joseph, jun., 4, Arthur's-street, Gray's-inn-road; and Huddersfield	Thomas Brook, Huddersfield
Baxter, Stafford Squire, 18, Abingdon-street; and Atherstone	Stafford Stratton Baxter, Atherstone
Benson, Samuel Miles, 8, Manchester-street	Thomas Moore, Yeovil; William Elliott Oliver, New Bridge-street
Brown, James Weston, Chardleigh-green, Somerset; Hemmingford-cottages; and Islington	Alfred Rooker, Plymouth
Blake, Frederick John, Grove-place, Camberwell	John Carlon, St. James's-street
Burland, Thomas Blanchard, 5, Maddox-street, Regent-Street; and Beverley	John Myers, Beverley
Bell, John Henry, 90, Holborn-hill	Charles Millett, 2, Middle Temple-lane; and Hindon
Burridge, William Edward, Shaftesbury	William Burridge, Shaftesbury
Bonsall, Isaac, 14, Charterhouse-street; Machynlleth; and Charterhouse-lane	George William Bonsall, Machynlleth
Collard, John Denne, 57, High-street, Poplar; and Canterbury	E. Barron, 29, Bloomsbury-square; W. H. Cullen, Canterbury, and Poplar
Carter, William Henry, 16, New Bridge-street, Blackfriars	William Elliott Oliver, 16, New Bridge-street, Blackfriars
Cobb, Henry William, 9, Montague-place; Temple; Great Ormond-street; and Salisbury	James Cobb, Salisbury
Chattock, Richard Samuel, 229, Oxford-street	E. H. Roberts, Exeter; R. H. Terrell, Gray's-inn-square; J. Terrell, Exeter
Claye, Thomas, 48, Upper Brook-street; Manchester; and Harrington-street	Richard Claye, Manchester
Cookson, John Fowler, Queen-street; Preston; Henrietta-street; Manchester-street; and Buckingham-place	William Dickson, Preston
Clark, Alfred, 12, Wilmot-street, Russell-square; and Snaith	Henry Vickers, Sheffield; Edward Esdale Clark, Snaith
Coe, William, Ongar, Clapham	Thomas Magnus Cuttlin, Ely-place, Holborn.
Chatfield, Richard Edwin, Dover	Charles Chatfield, Austin Friars; Edward Knocker, Dover
Comins, William Willoughby, 9, Alfred-street, Bedford-square; and Witheridge	William Comins, Witheridge
Chapman, Frederick, 68, George-street, New-road; and Devonport	William Chapman, Devonport
Cockerell, William, Cambridge	Charles Henry Cooper, Cambridge

Calthrop, Thomas Donnie, Morden College, Blackheath	John Smith Rymer, Whitehall-place
Carnsew, Henry, Cedars, Putney	E. Lambert, Raymond-buildings; C. F. Chubb, Verulam-buildings
Deighton, Richard Scott, 2, Park-place, Holloway	Thomas Kirk, 10, Symond's-inn
Dyson, Arthur, 59, Burton-crescent	William Dyson, Southampton-row
Davies, Robert, Warrington; Newton-le-Willows; and South-crescent	John Urmson, Warrington
Davies, William, 18, Halleford-street; Haverford-west; St. Andrew's Hill; and Parkfield-street	William Rees, Haverfordwest
Druce, George Frederick, 6, Thanet-Place, Strand; Oxford; and Oxford-terrace, Clapham-road	John Walsh, Oxford
Daeth, George W. Hughes, Mitre-court, Fleet-street	S. Waller, Cuckfield; H. Hughes, Clement's-inn
Dashwood, Henry Charles, 38, Upper Berkeley-street, Portman-square	S. Foote, Salisbury; C. H. Radcliffe, Salisbury; T. Dashwood, Sturminster, Newton
Dalton, John, jun., Grafton-street-east, Fitzroy-square; Salford; Melton-street, Euston-square	Charles Gibson, Manchester; Wm. Gibson, Lincoln's-inn-fields
Durant, John Frederick, 10, Lancaster-place, Strand; Poole; and Baker-street, Lloyd-square	John Durant, Poole
Evans, Richard, jun., College-place, City-road; Wolverhampton; Featherstone-buildings; and Wakefield-street	George Robinson, Wolverhampton
Evans, Worthington, Stoke Newington	Morris Charles Jones, Liverpool
Faithfull, Frederick Dundas, 32, Elizabeth-street, Eaton-square; New Milman-street, Russell-square	G. P. Nicholson, Wath-upon-Dearne; D. S. Bockett, 60, Lincoln's-inn-fields
Fisher, Robert B. Horman, 16, James-st., Buckingham-gate	Samuel Fisher, Merchant Tailors'-hall
Freestone, Anthony Sexton, 45, Gower-place, Norwich	Edward Freestone, Norwich; Robert Gamlen, Gray's-inn-square
Foster, Benjamin, 12, Friendly-place, Whitechapel	Robert Swan, Gray's-inn-place
Fereday, Richard William, Birmingham	George Robinson, Wolverhampton
Forster, William, Belgrave-street, Pimlico; and Norwich	Henry Cooke, Norwich
Fearnhead, Charles Peter, Colehill-lodge, Fulham; Clifford's-inn	Peter Fearnhead, Clifford's-inn
Frere, John, jun., Stamford-brook, Hammersmith; Whitchurch, Hants	Thomas Pain, Whitchurch
Guy, Augustus George, 15, Everett-street, Russell-square	Joseph Guy, Gainsborough
Golding, Thomas Mingaye, 1, Cottage-place, Brompton; and Walsham-le-Willows	John Wardale King, Walsham-le-Willows
Goodwin, Henry Wycliffe, 12, Princes-street, Cavendish-square; and Thavies'-inn	Charles Goodwin, King's Lynn
Gregson, R. Shuttleworth, East Dulwich; Peckham Rye	G. J. Ottaway, Staplehurst; John Gregson, Angel-court
Godfrey, John, Shepton Mallet; Albany-street, Regent's-park; and Liverpool	J. Styles, Shepton Mallet; J. B. Cracknell, Paulton; E. Govett, Upper North-place, Gray's-inn-road; P. F. Curry, Liverpool
Grain, Frederick, 5, New Millman-street; and Great Shelford	George Joseph Twiss, Cambridge
Gillard, Peter, 12, Windsor-place, City-road	William Cholwich Haley, Kingsbridge
Hartley, William, 35, Lincoln's-inn-fields; Compton-street; and Settle	Joseph Heath, Settle; George Hartley, Settle
Helder, Augustus, Whitehaven	Richard Armitstead, Whitehaven
Hunt, William, 55, Alfred-street, Islington	Daniel James Lee, 4, Bedford-row
Hall, John William, Newbury	John Tanner, Speenhamland
Hays, William Stephens, 22, Everett-street, Russell-square; and Cheltenham	John Bubb, Cheltenham; John Surman Cox, Cheltenham
Hunter, Rawdon, jun., 11, George-street, Euston-square; Munday-street, Hoxton; and Hoxton-square	Charles Cook, 1, New-inn; R. B. Sanders, 1, New-inn
Howard, John, 51, Fore-street; 7, Swan-street, Southwark	Edward Towsey, Quality-court; William F. Geach, Pontypool; F. G. Skerrard, Pontypool; Stephen Towgood, Newport
Heywood, Charles, 1, Limefield-terrace, Manchester; Upper Duke-street, Liverpool	Thomas Potter, Manchester
Hanmer, Thomas, 2, New-square, Lincoln's Inn; Shrewsbury; and Wimpole-street	W. W. How, Shrewsbury; R. N. Bennett, Lincoln's-inn
Hancock, Theodore, Wedmore; and Canonbury-terrace, Islington	John Bailey, Wedmore
Holloway, Benjamin John, Thame	Richard Holloway, Thame
Hindle, Henry, Park-street, Islington; Gower-place, Liverpool	John Hindle, Liverpool; Edward Fred. Burton, Chancery-lane

Hardwick, Edward, 14, Everett-street, Russell-square; and Southampton-row . . .
Hawkes, Jonathan Blundell, Caen, France; Clifton; and Halsey-terrace, Chelsea . .
Henderson, Joseph Quarme, Dalston-green . .

J. Lofthouse, Leeds; G. N. Emmet, Bloomsbury-square; F. Knight, Bloomsbury-square

Hawker, Frederick John, Fulham-place; and Chard, Somerset . . . . . .
Husband, John E. Colvile, Oswestry; Torquay; Mitre-court-chambers; and Temple . .
Harvey, Enoch, Liverpool; and Wavertree, Childwall . . . . . .
Hughes, George Martin, Strahan-terrace, Islington; and Maidstone . . . . . .
Hampson, Samuel, Manchester; and Coldbath-square . . . . . .
Hicks, William, 10, Lancaster-place, Waterloo-bridge; and Hertford . . . . . .
How, Richard Nesbit, Tiverton; Upper Seymour-street . . . . . .
Jones, Richard Edward, 62, Myddelton-square; 5, Westbourne-grove west . . . .
Ingram, John, Southampton-row; Battle; and Steyning . . . . . .
Johnson, Marcus Henry, Highgate-hill . .

Francis Ridout Ward, Bristol
Edward Jenner Murray, Whitehall-place, Westminster

William Dommett, Chard, Somerset
E. Wyatt, Mount St. Asaph; C. J. Bloxham, Lincoln's-inn-fields
Thomas Harvey, Liverpool; Matthew J. Lowndes, Liverpool

Frederick Scudamore, Maidstone

James Chapman, Manchester

Philip Langmore, Hertford
John S. How, Tiverton; T. E. Parson, Lincoln's-inn-fields

James John Brettell, 2, Staple-inn

Iveson, Francis, Liverpool-street, King's-cross .
Jones, John, Liverpool . . . . . .

Frederic Ellman, Battle
J. M. Brown, Hind-street; R. E. Johnson, Austin Friars
James Baker Bainton, Beverley
An Attorney of the Court of Common Pleas at Lancaster

Jenkyn, Osborn, Silwood-place, Brompton; and Clarendon-square . . . . . .
Jones, Benjamin William, 22, Cheyne-walk, Chelsea . . . . . .
Knight, George Henry, 11, Serjeants'-inn, Fleet-street . . . . . .

James Jenkyn, John-street, Adelphi

Septimus Davidson, Weavers'-hall
C. Knight, Union-court; R. J. Crosse, Southmolton, and Essex-court, Temple; R. Siamey, 11, Serjeants'-inn, and Essex-court

King, Richard Chapman, 45, Gower-street, Bedford-square; and Wellington . . .

John Frederic Isaacson, Norfolk-street, Strand

[*The remainder of this List will be given in our next Number.*]

NOTES OF CASES IN AND AFTER MICHAELMAS TERM.

BENEFIT BUILDING SOCIETY.

In a suit to redeem a mortgage and obtain a reconveyance, the construction of the Benefit Building Society Act (6 & 7 W. 4, c. 32) came under the consideration of the Court.

The *Vice-Chancellor of England* said, it must be made to appear that the plaintiffs were members of the building society. By the rules of the society it was directed, that the names of each member should be entered in a book. That book had not been produced in evidence, and its non-production was incontrovertible evidence, that they were not members; and, even if their names had been in the book, he still thought that from the words of the act, and the rules of the society, it would have been a fraud on the act to have made them members. The society was intended for the benefit of industrious individuals who might be hampered in their circumstances, to enable them to purchase houses and lands. The words of the first section of the act were:—"To erect or purchase one or more dwelling house or houses," &c. But what was the case here? A company, established for a totally different purpose, wished to borrow money, and the scheme set up by the defendants was, that the money should be borrowed as if they were acting members of the building society; but there was nothing in the act which could countenance a company borrowing money; the words used in the act throughout, were "his" and "her," thereby plainly showing what the views of the legislature were, viz., to assist individuals. Under these circumstances, he should refer it to the Master to take an account in the usual way of the money actually advanced by the building society for the plaintiffs. *Dobinson v. Hawkes*, Vice-Chancellor of England, 24th Nov. 1848.

GIFT VOID FOR REMOTENESS.

A testator directed that certain property should go to the children of his (the testator's) child at the age of *twenty-four*.

The Court held, that this gift being postponed beyond life in being and twenty-one years, was void for remoteness. *Hales* v. *Hales*, Vice-Chancellor Wigram's Court, Nov. 16, 1848.

TRUSTEE ACT.

On the death of Mr. Agar, Q. C., and another trustee, and the absence abroad of a third trustee of a charity school, application was made under stat. 1 W. 4, c. 60, to appoint new trustees without the expense of a reference to the Master.

His Honour said, the object was a proper one, and he would at once order the conveyance. *Exparte Lord Kenyon, In re Kentish and Camden Towns' School,* V. C. Knight Bruce, Nov. 17.

BEQUEST TO CURATES.

On a bequest for the benefit of curates of the deanery of Bingham, whose annual salary did not exceed 35*l.*, and to such as should be recommended to the archdeacon by a plurality of the voices of the beneficed clergy at the visitation, it was held that both classes were comprehended in the gift, and that, although there was no curate with so small a salary as 35*l.*, the gift did not fail. *Pennington* v. *Buckley*, V. C. Wigram, Nov. 17.

INSUFFICIENCY OF RETURN TO MANDAMUS.

A mandamus having issued to the Clerkenwell Improvement Commissioners, calling upon them to take the proper steps to assess the amount of compensation, to be paid to Henry Towell, whose premises at Clerkenwell the commissioners had given notice were required for the purpose of certain contemplated local improvements; the commissioners returned, that they had no funds at their disposal, nor any immediate prospect of raising any funds for carrying into effect the purposes of the act. To this return there was a demurrer, in support of which the attention of the Court was called to an act of last session, (11 & 12 Vict., c. 162, s. 5,) under which power was given to these commissioners to raise a sum of 200,000*l.* It was also submitted that the commissioners were estopped from relying on the want of funds, by having, in the exercise of the powers given by the act under which they were constituted, given Mr. Towell notice.

The Court observed, that the mandamus was not to pay, but only to assess, the amount of compensation. If an application should be made hereafter to pay the money, the want of funds might be a sufficient answer, but was no reason why the amount of compensation should not now be assessed; and this being done, the prosecutor would be one step nearer obtaining that to which he was entitled. A peremptory mandamus was, therefore, awarded. *Reg.* v. *The Clerkenwell Improvement Commissioners*, Queen's Bench, Dec. 5, 1848.

CONSTRUCTION OF THE APOTHECARIES' ACT.

The statute 55 Geo. 3, c. 194, s. 21, enacts, that "no apothecary shall be allowed to recover any charges, unless he shall prove on the trial that he has obtained a certificate to practise as an apothecary from the Master, Wardens and Society of Apothecaries." Section 19 provides, that 10 guineas shall be paid to the company for every certificate granted to a person intending to practise in London, and six guineas for every certificate granted to a person intending to practise in any other part of England and Wales, and that no person obtaining a certificate to practise in any other part of England and Wales shall be entitled to practise in London; and section 20 imposes a penalty on persons practising as apothecaries without such certificates.

Upon the trial of an action to recover charges for attendance and medicines supplied in London, the plaintiff produced a certificate from the Apothecaries' Company, for which, it appeared, he had only paid six guineas,—the fee entitling him to practise in the country. It was contended, under these circumstances, that the plaintiff could not recover. *Chadwick* v. *Benning*, Ry. & Mood. 316, and 2 Car. & P. 106, was cited.

The *Court* thought the object of the statute was to prevent unfit persons from practising, and the Apothecaries' Company were also to receive certain fees. It was clear that a person who went through the proper examination, and showed that he was skilled in medicine, was entitled to a certificate absolutely and generally to practise as an apothecary. There were no different gradations of fitness for practising in the one place or the other; but it was in the gentleman's election to practise in either. If he practised in London, he must pay 10*l.* 10*s.*; if in the country, 6*l.* 6*s.* This was a fiscal regulation for the benefit of the Apothecaries' Company, which could be enforced by penalty under the 20th section. But it did not appear to the Court to be within either the letter or spirit of the act to say, that because he had not paid the larger fee he could not recover his debt incurred in London. The 21st section had been complied with, and looking to the scope and intention of the act, there was no reason why the plaintiff should not recover. The rule for a nonsuit was therefore discharged. *Young* v. *Geiger*, Com. Pleas, Nov. 16.

SUGGESTION TO DEPRIVE OF COSTS.—PRACTICE.

Where a rule was obtained to enter a suggestion on the Roll to deprive the plaintiff of costs under the County Courts' Act, and it appeared, on showing cause against the rule, that judgment was entered for the debt, leaving a blank space to be filled up with the amount of the costs,

The *Court of Exchequer* held, that the rule was misconceived, and that it ought to have been to set aside the judgment, and not to enter a suggestion. There being a judgment entered, the Court could not give leave to enter a suggestion, and upon this ground, discharged the rule with costs. *Soames* v. *Cooper*, Exchequer, Nov. 25.

OPERATION OF LEASE NOT EXECUTED BY LESSOR.

In an action for breach of a covenant to re

pair, contained in a lease, the defendant pleaded that, although he had duly executed the lease, it had never been signed, sealed or delivered by the lessor, and that he, the defendant, had not entered under the lease, or enjoyed the term which it proposed to grant. To this plea there was a special demurrer, and after argument, and taking time to consider,

The *Court of Exchequer* held, (citing the authority of *Cardwell* v. *Lucas*, 2 Mees. & W. 111,) that the plea was a sufficient answer to the action, and gave judgment for the defendant. The case of *Couch* v. *Goodman*, 2 Q. B. 599, was said to be distinguishable from the present case, because there the lessee had netered and enjoyed during the term, but the case, was not decided upon that ground, and the observations which fell from the Court of Queen's Bench in that case, so far as they could be considered to conflict with the present judgment, were said to be extra-judicial. The present judgment proceeded on the ground that no term was created out of which an obligation to repair could arise, and as the lessee never enjoyed the term, there was no consideration for his covenant, nor was he bound by it. *Pitman* v. *Goodbury*, Exchequer, Nov. 22.

RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Vice-Chancellor of England.

Scarf v. *Soulby*. Nov. 11, 1848.

VOLUNTARY SETTLEMENT.—CREDITORS.

A voluntary settlement made by a married man on a woman with whom he had cohabited, and her children, is void as against creditors, the settlor being at the time of the execution of the settlement in insolvent circumstances.

In this case the testator, John Milner, being possessed of three policies of assurance, on the 7th December, 1842, executed a voluntary deed of settlement, whereby, after reciting that he was desirous of making some provision for E. Q., a person with whom he had cohabited, and her four children, and for that purpose, having agreed to secure to her an annuity of 250*l*., he assigned the said policies to her. The settlement contained the usual clauses settling the property on her and her children, with a proviso against anticipation. In May, 1846, John Milner died in insolvent circumstances, and a bill was filed by the creditors for the purpose of having the aforesaid deed of assignment set aside on the ground that at the time he executed it he was insolvent or embarrassed or was indebted to divers persons in considerable sums of money, and that the same was executed by him without any pecuniary or other good or valuable consideration, and therefore void as against creditors. John Milner was a married man at the time he executed the settlement.

Mr. *Stuart* and Mr. *Younge*, for the plaintiff, contended that the settlement was clearly void as against creditors, under the statute 13 Eliz. c. 5, citing *Townsend* v. *Windham*, 2 Ves. sen. 10, and *Priest* v. *Parrot*, 2 Ves. sen. 160.

Mr. *Bethell* and Mr. *Southgate*, for the defendants, urged that the existence of debts at the time of the settlement was not sufficiently put in issue by the bill, and therefore the evidence of such debts could not be received as against E. Q. It should have been proved, also, that the settlor was insolvent at the time he executed the settlement. *Lush* v. *Wilkinson*, 5 Ves. 384.

The *Vice-Chancellor* said, the only reason why he had delayed giving judgment in the case was, because there had been some dispute as to the language used in the bill, but he was of opinion that there was enough stated to satisfy him that the party was embarrassed and insolvent at the time he executed the settlement; but it was quitte sufficient to prove the fact that he was indebted at the time he executed it. The language of Lord Hardwicke, in *Townsend* v. *Windham*, was very decided: his lordship there said, "he knew of no case where a man, indebted at the time, made a voluntary conveyance to a child, without consideration, and died indebted, but that it should be considered part of his estate for the benefit of his creditors." There was literally no doubt in this case, and the only observation he should make was, that it was rather a worse case for the unfortunate woman than he had at first supposed; for in the case of *Priest* v. *Parrot*, Lord Hardwicke refused to countenance the provision made for a woman who had lived in adultery with a married man, in contradistinction to the case of a woman living with an unmarried man; and this case struck him forcibly at the time, because it was the one which Lord Campbell had selected in his Lives of the Chancellors, as showing what was the turn of Lord Hardwicke's mind with respect to his decisions. His opinion was, therefore, that the settlement was void as against creditors.

Vice-Chancellor Knight Bruce.

Raistrick v. *Elsworth*. May 26, 1848.

PRACTICE.—ANSWER TAKEN OFF THE FILE.

The clerk to the solicitor having, without orders, signed a consent to alter the title of answers which were in the custody of the

officer of the Court, after the client of his master had instructed that no indulgence should be given, the answers were on the motion of the plaintiff ordered to be taken off the file, with liberty to reswear them.

THIS was a motion on behalf of the plaintiff, that the joint and several answer, or the parchment-writing, purporting to be the joint and several answer of the defendants, Abraham Elsworth and others, (naming them,) and the joint and several answer or parchment-writing, purporting to be the joint and several answer of the defendants, William, and, &c. (other defendants) might be taken off the file with costs for irregularity. It was sworn that the answers were taken by commission at Leeds, on the 15th of March. The consent of the plaintiff's commissioner was asked to waive a messenger in sending the answer to London, but it was refused. The answers were then sealed up and sent by special messenger to London, who left the same with the officer of the Court. On the 17th of the same month, Mr. Flower's clerk (Mr. Jowett) was applied to by the clerk of the defendant's London solicitor, to consent to a correction of a trifling mistake in the answer, such amendment being stated to be merely formal. Mr. Jowett, who was common law clerk, and ignorant of Chancery business, agreed to the alterations, and signed Mr. Flower's name to the consent. Mr. Flower had been before instructed by the plaintiff to grant no indulgence, but these facts were not known to Mr. Jowett.

Mr. *E. M. Harrison* in support of the motion, cited *Priten* v. *Thompson*, Coop. 249; *Griffiths* v. *Wood*, 11 Ves. 62; *Atty* v. *Fowey*, 3 Swan. 185; *Harris* v. *James*, 3 B. C. C. 399; *Cope* v. *Parry*, 1 Madd. 83; *Cocke* v. *Cocke*, ib. 265; *Yates* v. *Hardy*, Jac. 223, and *Fry* v. *Mantell*, 4 Beav. 485.

Mr. *Elmsley* appeared for the motion, contending, that the party who went to the office of Mr. Flower could not possibly know that the clerk who gave the consent was not a duly authorized person. Time had been lost by the blunder, which was wholly attributable to the plaintiff's solicitor.

The *Vice-Chancellor*. In this case, the commencement of error was on the part of the defendants. It is a clear case of waiver or assent on the part of the plaintiff, who was not in error. Now, without entering into more general observations, there is here a combination of two circumstances, by which, I am induced to think the right course is, that this answer should not remain upon the file. I collect the solicitors and the parties in the country to have been on such terms, unfortunately or fortunately,—but, in fact, upon such terms between themselves as to lead them to know that no indulgence would be granted before or since the answer filed. Now, that circumstance does not appear to have been known in London on this occasion. It does not appear to me that any blame which rests in any quarter arises from the circumstance that it was not known in London on this occasion. There is then this fact, that whatever may have been the general authority—the general power of Mr. Jowett—it may well be supposed that Mr. Jowett was a common law clerk certainly, and if a Chancery clerk, not so mainly or principally: he seems to me to have been a common law clerk who assisted occasionally in Chancery business in an office where there was not a regular Chancery clerk. Mr. Jowett, thus circumstanced, may, without any imputation on him, be well supposed not to have been fully alive to all the consequences of an alteration in an answer of the description here made. And I am of opinion, upon the evidence, that he was not aware of these circumstances,—that his mind was not fully alive to them. I do not blame the gentleman who acted for the house for not making a communication to Mr. Jowett, of the nature of which he may have thought as little as the other; but so it was, in my opinion, that Mr. Jowett was not aware of the extent to which his consent went. And upon the combination of these circumstances, as the effect on the plaintiff's case may be very serious, and as he has answers on the record which cannot be sustained, it will be safer to have them taken off the file, with liberty to re-file them again, and there must be time allowed, as there are a great many defendants. I cannot have any process of contempt in the meantime issued. They may be re-filed in three weeks' time.

Court of Queen's Bench.

(Before the Four Judges.)

Locke v. *Ashton*. Michaelmas Term, 1848.

TRESPASS AND FALSE IMPRISONMENT.—REMAND BY MAGISTRATE.—DAMAGES.

The plaintiff was given into custody by the defendant on a charge of felony, the magistrate remanded him, and he was afterwards discharged.

Held, *in an action of trespass, that the defendant was only liable for damages occasioned by the original imprisonment, and that the subsequent imprisonment was the act of the magistrate, for which the defendant was not responsible.*

THIS was an action of trespass and false imprisonment. The plaintiff was given into custody on a charge of felony, he was twice remanded by the magistrate before whom he was taken, and ultimately discharged. These imprisonments were all set out in the declaration, but not alleged by way of special damage. The defendant pleaded not guilty. The case was tried before Lord *Denman*, C. J., and a verdict found for the plaintiff, damages 10*l*. which amount of damages was given by the jury, for the whole of the imprisonment alleged in the declaration, his lordship being of opinion that the defendant was liable for the damages resulting from the original unlawful act. A rule *nisi* was afterwards obtained for a new trial, on the ground that the defendant was only

liable for the imprisonment occasioned by taking the plaintiff before the magistrate in the first instance, and that what took place afterwards was the act of the magistrate and not of the defendant.

Mr. *Charnock* showed cause, and contended, that the ruling of the learned judge was correct. The defendant was guilty of an unlawful act, in taking the plaintiff into custody without a just cause for doing so, and the subsequent imprisonments were the consequences arising from that unlawful act. The case is similar in principle to *Scott* v. *Shepherd*,[a] where the defendant threw a squib, which was thrown about by several persons, and ultimately inflicted a serious injury on the plaintiff. In that case, as in the present, the defendant was held liable for the injuries arising from his original unlawful act.

Mr. Whitehurst, in support of the rule. When the plaintiff was given into custody, and the case came before the magistrate, the defendant lost all further control over the proceedings, and if he was willing then to release the plaintiff, he had no authority to do so. [Lord *Denman*, C. J. Does not the question seem rather to depend on the fact, whether the remand was at the request of the defendant.] That does not seem to affect the question, because the magistrate having competent authority over the subject, acts judicially, and the defendant cannot be made responsible for the time the plaintiff was remanded, unless it could be shown that he acted maliciously in procuring such remands. On principle and on authority of decided cases, the defendant is entitled to have this rule made absolute; *Holtan* v. *Lotun*;[b] *Waterer* v. *Freeman*;[c] *Rafael* v. *Verelst*;[d] *Barber* v. *Rollinson*;[e] *Aitken* v. *Bedwell*.[f]

Cur. ad. vult.

Lord *Denman*, C. J., on a subsequent day of the term delivered the judgment of the Court. This was an action against the defendant for causing the plaintiff to be apprehended and carried before a magistrate, by whom he was at first remanded, and was afterwards discharged. The damages had been taken not only for the trespass for causing the plaintiff to be taken, but also for the length of time during which he was remanded. The Court however are of the opinion, that this was improper; the remand was the act of the magistrate, and the causes of damage were wrongly blended together. For this reason we are of opinion that the rule must be made absolute for a new trial.

Rule accordingly.

Court of Common Pleas.

Corden v. *The Universal Gaslight Company*.
Michaelmas Term, 1848.

JOINT-STOCK COMPANIES' ACT, 7 & 8 VICT. C. 110.—EXECUTION AGAINST A MEMBER FOR THE TIME BEING.—RULE AS TO A SECOND APPLICATION.

It is no good preliminary objection to a rule nisi *for issuing execution against a member for the time being of a joint-stock company, upon a judgment obtained against such company, under the* 7 & 8 *Vict. c.* 110, *ss.* 13, 66, *and* 68, *either that a previous rule, having the same object, had been discharged with costs, on the ground that there appeared no notice to the defendant to warrant it, or that the costs of such former rule still remained unpaid, and the Court, therefore, made such rule absolute, upon an affidavit of the matters required by the above act.*

A RULE had been obtained in this case, calling upon one Dominic Causse to show cause why execution should not issue against him, as a shareholder for the time being in the above company, upon a judgment recovered by the plaintiff against such company, under the provisions of the 7 & 8 Vict. c. 110, ss. 13, 66, & 68. The affidavit in support of the rule stated, that a writ of *fieri facias* had issued against such company, that *nulla bona* had been returned thereto, and that, at the time, there was not sufficient property at the place of business of the company to defray even the expenses of a levy; that soon afterwards the said place of business was closed, and no one in attendance there; that, to the best of the deponent's belief, the company had no place of business, and that any further execution against the company would be of no avail; that the company was completely registered, and the defendant a party to the deed of settlement of the 15th of September, 1846; that, in January, 1846, the defendant also signed a consent to become a shareholder in the company, and by the deed of settlement, which recited his being a shareholder, he was appointed a director; that, up to the 6th of November instant, no transfer of the defendant's shares had been made; and that notice of the present application had been left at the residence of the defendant.

Talfourd, Serjeant, now showed cause. There were preliminary objections to the rule in this case being entertained. The same application had been made against the present defendant, on a former occasion, and the Court decided that the notice then given was insufficient, under the 7 & 8 Vict. c. 110, s. 68, and discharged the rule with costs, 17 Law Jour. C. P. 61, (23 L. O. 392). It now appeared that the costs of that application had not been paid, and it was submitted, by analogy to cases of ejectment, the plaintiff could not now be heard, until those costs had been paid. But, supposing that were otherwise, then it was submitted, that the nature and object of the present rule was the same as the former application; it was, therefore, *res judicata*, and could not be entertained a second time. The materials moved upon were in effect the same, and the objection on the

[a] 3 Wilson, 403. [b] 6 Car. & Payne, 726.
[c] Hobart, 266. [d] 2 Wm. Bl. 983.
[e] 1 Cr. & Mees. 330. [f] 1 Mood. & Mal. 68.

former occasion could not be considered as merely technical. *Reg.* v. *Manchester and Leeds Railway Company*, 8 Ad. & El. 420.

Phipson, in support of the rule. As to the objection on the ground of the costs of the former application not having been paid, it was submitted that the principle which governed in cases of ejectment was that of preventing oppression, and did not apply here. There was no case to be found where a second rule was stayed until the costs of the first had been paid. Then, as to the second objection, this was not the same application as the former. The 66th section of the 7 & 8 Vict. c. 110, gives the plaintiff a right to have execution in a case like the present either against "the person, property, and effects of any shareholder for the time being, or any former shareholder of such company, in his natural or individual capacity." The prior application was against the defendant as a former shareholder, and the present, as a shareholder for the time being. The liability of the two classes of shareholders was different, and under a notice to a party as a shareholder for the time being, such party could not be proceeded against as a former shareholder. It was not from any defect of merits that the plaintiff failed on the former occasion, but simply because of his failing to give himself a *locus standi* in Court.

Coltman, J.[a] As to staying proceedings until payment of the costs of the former application, as the defendant had got an order in his favour for such costs, and there was nothing whatever to show that he could not enforce such order, I think there was no sufficient reason for staying the present proceedings on that ground. Then, as to the main question, of whether or not, after the discharge of the former application, the Court ought to entertain the present rule? No doubt, if the case had already been heard upon the question of whether or not the defendant was liable as a shareholder, the Court would not suffer the question to be again brought forward, in violation of the rule which declares that no second application should be allowed after an unsuccessful one of the same kind. But, in point of fact, the former motion had failed because no notice was shown, and now the plaintiff has put himself in a different situation. Without, therefore, at all doing violence to any of the cases upon the subject, I think we may reasonably hold that the plaintiff here is entitled to be heard again; and, as it appears the defendant became a shareholder of the company in the manner pointed out by the 3rd section of the 7 & 8 Vict. c. 110, and that he has not divested himself of that character by a transfer under the 13th section, the present rule for issuing execution against him must be made absolute.

Maule, J., and *Williams*, J., concurred.

Rule absolute.

[a] *Wilde*, C. J., was absent.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Law of Bankruptcy.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75.

Law of Costs, p. 35.

Law of Evidence, p. 56.

Law of Property and Conveyancing, p. 113.

Principles of Equity, p. 134]

ACT OF BANKRUPTCY.

Statute 5 & 6 Vict. c. 122, ss. 13—17.—Under statute 5 & 6 Vict. c. 122, if a trader, summoned by his creditor under section 11, and being indebted to him in 149*l*. 4*s*., signs an admission that he is indebted to such creditor in 149*l*., and there is nothing to show that the 4*s*. was intentionally omitted, such trader does not commit an act of bankruptcy if he omits to perform anything required by section 13 or section 15, from parties refusing to admit debts on summons, or admitting them in part.

If the trader, having, on summons, given an admission according to statute 5 & 6 Vict. c. 122, agrees with the creditor to deposit bills with him as a security, and submits to a judge's order for payment of the debt by instalments, with which terms the creditor is satisfied, no act of bankruptcy is committed, though more than 14 days elapse between the filing of the admission and the day appointed for fulfilling the stipulated terms, provided the agreement itself be made within the 14 days; for in such case the trader has compounded for the demand in due time, to the satisfaction of the creditor, within the meaning of section 14. *Pennell* v. *Rhodes*, 9 Q. B. 114.

See *Adjudication; Notice.*

ADJUDICATION.

Act of Bankruptcy.—The acts of bankruptcy enumerated in the 6 G. 4, c. 16, s. 3, are meant as tests of the trader's insolvency.

A trader may commit an act of bankruptcy by "fraudulently delivering goods," without any dishonest intention, or any moral fraud. *In re Joseph Hubbard*, 36 L. O. 332.

ARRANGEMENT ACT, DEBTORS.

See *Debtor and Creditor's Arrangement.*

ATTORNEY'S PRIVILEGE.

Witness.—An attorney cannot refuse to state when notice of an act of bankruptcy came to his knowledge, on the ground of professional privilege.

Notice of an act of bankruptcy is a matter concerning the estate of a bankrupt, and of an act of bankruptcy by him committed, within the 6 Geo. 4, c. 16, s. 34. *In re Conquest, Exparte Butler*, 36 L. O. 288.

COMMITTAL, POWER OF.

See *Sub-division Court.*

CONTINGENT DEBT.

See *Proof of Debt.*

DEBTOR AND CREDITORS' ARRANGEMENT ACT.

The Commissioners will not entertain a petition presented under the statute 7 & 8 Vict. c. 70, unless the petitioner sets forth in the schedule annexed to such petition the date when each particular debt was contracted. *Anonymous*, 36 L. O. 254.

EQUITABLE MORTGAGE.

Lease.— Priority of incumbrance.— A. B., the owner of an agreement for a lease, deposited it with *C. D.* as a security, and afterwards obtained from the lessor a lease in somewhat different terms from those in the agreement. Upon the lease being granted, *A. B.* deposited the same with the lessor as a security, and shortly afterwards, under a false pretence, obtained possession of the lease, and handed it over to *E. F.* as a security. *E. F.*, upon receiving from *C. D.* the money due to him, gave the lease to *C. D.* *A. B.* became bankrupt: *Held*, that the lessor had the prior charge upon the lease, and that *C. D.*, by means of the deposit of that agreement, had a lien on the lease, notwithstanding the variations. *Exparte Reid, re Buckland*, 36 L. O. 489.

FIAT.

Injunction.—Jurisdiction.—Where a bill is filed for the purpose of restraining the issuing of a fiat in bankruptcy, under statute 1 & 2 Vict. c. 110, s. 8, and the plaintiff alleges that the defendant is not proceeding according to the act, in order to prevent the injunction from issuing, it is necessary for the defendant to answer that allegation, and a demurrer to the bill was overruled. The Court of Chancery will interfere to restrain the issuing of a fiat in bankruptcy, if it appears that there is a clear ground of equity against its issuing, or that the party taking out the fiat is not proceeding according to the act. *Pim* v. *Wilson*, 36 L. O. 528.

See *Petitioning Creditor's Debt.*

FRAUDULENT CONTRACT.

See *Petitioning Creditor's Debt.*

INJUNCTION.

See *Fiat.*

LEASE.

See *Equitable Mortgage.*

LIMITATION IN CASE OF BANKRUPTCY.

Applying to.—Antecedent bankruptcy.—Trust funds were settled by deed upon trust, to pay the income to the settlor for life, and, after his death, to pay the income of a part thereof to *E. M.* for life, or "until he should become bankrupt," and, after his decease, or "upon his becoming bankrupt," then in trust to pay the income of such part to the wife or widow of *E. M.*, for her separate use, with remainder to the child or children of *E. M.*, with a trust for accumulation in case *E. M.* should have no such children or wife, and he should have forfeited his life interest. *E. M.* was, at the time of the execution of the deed of settlement, an uncertificated bankrupt: *Held*, that the income of *E. M.*'s share belonged to his wife, for her separate use.

Under the same deed, a like part of the same trust funds was settled upon trust for *C. C. M.*, his wife and children, with similar conditions to those expressed concerning the share of *E. M.*; *C. C. M.* was, at the time of the execution of the deed of settlement, a bachelor, and an uncertificated bankrupt; *C. C. M.*'s share was directed to be invested, the income to accumulate. *Manning* v. *Chambers*, 1 De G. & S. 282.

MORTGAGE.

See *Equitable Mortgage.*

NOTICE OF ACT OF BANKRUPTCY.

A notice given by a trader, that he has filed a declaration of insolvency, pursuant to 5 & 6 Vict. c. 122, s. 22, where a fiat in bankruptcy issues within two months from the filing of such declaration, is a sufficient notice to deprive the execution creditor of the benefit of 2 & 3 Vict. c. 29, s. 1, so that he is not entitled to the proceeds of goods levied after the notice, but before the fiat issued. *Green* v. *Lawrie*, 1 Exch. R. 335.

See *Attorney's Privilege.*

PETITIONING CREDITOR'S DEBT.

Effect of fraudulent contract.—Held, that a creditor executing a composition deed, and at the same time privately stipulating for an advantage beyond the other creditors, thereby ceased to be a creditor for any sum which would sustain a fiat. *In re Cross, Exparte Gibbons*, 37 L. O. 34.

PRIORITY.

See *Equitable Mortgage.*

PROOF OF DEBT.

Contingent debt rejected.—A. and *B.* and *C.* as his sureties, executed a joint and several bond to pay 750*l.* by instalments, conditioned that all was payable on the bankruptcy of *A.*, *B.*, or *C.* The 750*l.* was brought by *A.* into the partnership of himself and *D.*, and *A.* and *D.* covenanted with *B.* and *C.* to indemnify them for having entered into the bond. *A.* and *D.* became bankrupt, and *B.*, one of the sureties, paid the 750*l.*: *Held*, that he was not entitled to prove for it against the joint estate. *Exparte Meyer, in re Meyer*, 36 L. O. 367.

See *Sureties*, 3.

RELEASE OF BANKRUPT.

Discretionary power under 11 & 12 *Vict. c.* 86.—The power given to the Commissioners in Bankruptcy, under the 11 & 12 Vict. c. 86, is discretionary, and will not be exercised in favour of a bankrupt who has shown no disposition to do justice to his creditors by making out his accounts. *In re Burts*, 36 L. O. 509.

SUB-DIVISION COURT.

Power to commit.—A warrant of commitment of a bankrupt to prison, under 1 & 2 W. 4, c. 56, for not answering satisfactorily the questions put to him by a Subdivision Court, need not set out the answers given before a single commissioner on his previous examination.

And if it state on the face of it that it is made by three Commissioners of the Court of Bankruptcy, "constituting a Subdivision Court," it is sufficient, and it need not show that the Court was duly summoned, or in what manner it was constituted.

The return to a *habeas corpus* set out a warrant of commitment of a bankrupt made by a Subdivision Court of Bankruptcy for not answering satisfactorily the questions put to him upon his examination, and authorizing the bankrupt to be detained, "until such time as he should submit himself to us, or to any of the Commissioners of the said Court of Bankruptcy, and full answer make to our or their satisfaction, to the questions put to him by us as aforesaid:" *Held*, that the return need not set out the fact that he had been taken afterwards before a single Commissioner, who had simply inquired if he had any further statement to make, upon which he made a statement, not tending to remove the dissatisfaction produced by his former answers, and was then taken back to prison.

Upon return to a *habeas corpus* to bring up a bankrupt detained under a warrant of commitment, for not answering satisfactorily the questions put to him by a Subdivision Court, under 1 & 2 W. 4, c. 56, affidavits of facts which do not appear upon the face of the return may be made use of by the bankrupt.

It is not necessary, in order to give the Subdivisional power to commit, that the answers should be in themselves contradictory, or actually contradicted by independent testimony. It is sufficient if they be of a clearly improbable character. *In re Martin*, 4 D. & L. 768.

Case cited in the judgment: Exparte Lord, 16 M. & W. 462.

SURETIES.

1. *Notice of sufficiency.—Bond.*—Where the notice of sufficiency of sureties to a bond, given under the stat. 1 & 2 Vict. c. 110, described one of the sureties as a "gentleman," and he turned out to be a clerk, the Commissioner refused to approve of the sureties. *In re Lysaght and Smithet*, 35 L. O. 240.

2. *Contribution.*—Where the plaintiff, the defendant, and another person, were co-sureties for *A.* by a joint and several promissory note, payable on demand, and the plaintiff paid less than his share before the defendant's bankruptcy, but subsequently more than his proper proportion: *Held*, in an action by him for one third of the sum paid, that the case was not within the 52nd section of 6 G. 4, c. 16, as the plaintiff was not a "person liable for" the bankrupt's debt, and therefore that he was entitled to recover the sum so claimed. *Wallis v. Swinburne*, 1 Exch. R. 203.

Cases cited in the judgment: Exparte Young, 3 V. & B. 40; Exparte Lobbon, 17 Ves. 335; Stedman v. Martinnant, 13 East, 427; Wood v. Dodgson, 2 M. & Sel. 195; Exparte Young, 2 Rose, 40; Exparte Watson, 4 Mad. 477; Exparte Watson, Buck, 455; Affialo v. Fourdrinier, 6 Bing. 306.

3. *Substituted debt.—Proof.*—A trader was indebted to his bankers, who agreed to take half if secured by the joint and several bond of the debtor and his son, payable by yearly instalments; and if any instalments should be in arrear, interest was to be paid on them. The bond was given, but no written particulars of the agreement were made. Before the first instalment was due the debtor and the bankers both became bankrupts: *Held*, that the assignees of the bankers could not prove for the original amount of debt, on the ground that as an additional debtor was introduced, and as the bond contemplated the instalments falling into arrear, the same was extinguished, and proof could only be made for the substituted debt. *Exparte Hernaman, in re Ewen*, 37 L. O. 52.

WITNESS.

See *Attorney's Privilege.*

[A Correspondent is reminded that the improvement in the present form of the Digest consists in placing all the cases within a given time, relating to each important head of Law and Practice, in separate sections, one of which is given in each number. The Practitioner and the Student will thus find all the cases collected together and arranged alphabetically. In other Digests the cases are not so classified as to afford this ready means of reference.

Thus in the present volume we have selected the Decisions relating to Wills;—the Law of Property and Conveyancing;—the Principles of Equity;—the Law of Evidence;—the Law of Costs; the Law of Bankruptcy;—and the reader will at a glance perceive whether the subject of the case he is in search of be comprised in the section before him, instead of having to peruse the whole of the cases.

References, it will be observed, are made at the head of each section to the preceding ones in the same volume.]

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 30, 1848.

"Quod magis ad NOS
Pertinet, et nescire malum est, agitemus."
HORAT.

BANKRUPTCY LAW AMENDMENT.

It is presumed that no apology will be deemed necessary for resuming our observations in reference to the proposed alterations in the law and practice in Bankruptcy, as the subject is full of interest to the legal profession as well as the public, and great diversity of opinion prevails in respect of many of the contemplated changes.

It will be remembered that the Select Committee of the House of Lords, in their Report, (printed *ante*, p. 127,) enumerate the points upon which unanimity is supposed to prevail, as inferred from the evidence of the several witnesses examined before the committee. According to this analysis, there are, by a singular coincidence, just *five points*, on which an entire concurrence of opinion exists amongst persons differing to a greater or lesser extent upon other matters. When the points, upon which this wonderful unanimity is said to prevail, come to be examined into, it will appear that they are of very different degrees of relative importance, and, although few persons may be desirous of affecting the singularity which would attach to a total rejection, we incline to think there are a multitude of heretics beyond the orthodox pale of Basinghall Street, who would hesitate before subscribing their unqualified assent to all the five points intended to be embodied in this new charter.

The subjects upon which the Report states that no difference of opinion exists, are as follow:—1st. The great improvement effected by the change in Bankruptcy administration created by the act of 1831, (1 & 2 W. 4, c. 56); 2ndly, The proposed extension of the jurisdiction of the Commissioners, by abolishing the appeal to the Vice-Chancellor sitting in Bankruptcy, under the act, 10 & 11 Vict. c. 102, and transferring it to a Court consisting of three Commissioners, with an ultimate appeal to the Lord Chancellor; 3rdly, Conferring upon the Commissioners, under "proper guards," a direct power of imprisoning bankrupts, as a punishment for fraud or misconduct; 4thly, Altering the mode of procedure, by abolishing the fiat and substituting a petition to the Court of Bankruptcy; and lastly, Considering the proposed Digest of the Law of Bankruptcy "as a valuable addition to the Statute Law."

In reference to the first of the five points, it may be conceded, that no one, now-a-days, proposes to go back to the system which existed prior to the year 1831, or to reconstitute the old Court of Bankruptcy, with its 70 Commissioners and innumerable abuses. The old system was intolerable, and hardly any change could be made which would fail to be considered an improvement, but we have looked in vain through the evidence of those witnesses, who are not connected officially with the Court of Bankruptcy, to find any indications of that unqualified and enthusiastic approval which would justify the noble lord who framed the Report, in stating, as he does, that "All the opinions, and all the

evidence, without any exception, are in favour of the new system, as a great improvement, and as universally approved by the mercantile world." The efforts made to persuade the witnesses to give their testimony in favour of a system, which the examiner may be supposed to regard with something like parental solicitude, and the equivocal success of these efforts are exemplified by the following extracts from the printed minutes of evidence. Mr. John Ingram Travers, acting partner in the firm of Joseph Travers and Sons, wholesale grocers, is thus interrogated :—

Q. Do you agree with Mr. Laidman on the point of the constitution of the Court of Bankruptcy?—*A.* Not being a lawyer, I can hardly enter upon that question.

Q. Do you agree with him that it is a great improvement on the old practice?—*A.* I think the theory of the new law better than the old one.

Q. Do you mean by the theory of the new law, the very practicable matter of having six Commissioners instead of seventy, who did but little business?—*A.* That is one part of it. I do not think the practice of the New Court of Bankruptcy, as it bears upon Bankruptcy and Insolvency, is an improvement upon the old law.

Q. Do you mean to say you think it was better to have seventy Commissioners who sat for half an hour a day upon a point, than to have six Commissioners who gave up their whole time to it?—*A.* I think the new Court is better than the old one.[a]

Upon this evidence, Mr. Travers is, of course properly, set down as adding his respectable testimony to that of the rest of the mercantile world, in favour of the universally applauded change effected by the act of 1831.

The testimony of Mr. Freshfield, the Solicitor for the Bank, is looked upon, we have no doubt, as still more conclusive on the subject, and, considering his position, and peculiar means of obtaining information, we may be excused for giving a somewhat more lengthened extract from his evidence. Beginning at page 225, of the printed minutes, Mr. Freshfield's examination is thus stated :—

"*Q.* Have you had occasion to turn your attention to the Bankrupt Laws?—*A.* Yes, I have.

"*Q.* Do you consider that the change which took place in 1831 was a great improvement in those laws?—*A.* Upon the whole it was.

"*Q.* Have you any doubt of the appointment of official assignees having been an improvement?—*A.* I think it was.

"*Q.* Do you consider that the transfer, from the creditor to the Court, of the power of granting the certificate was an improvement?—*A.* I do not.

"*Q.* You think it was better vested in the creditors?—*A.* I think it would have been much better if it had been left in the hands of the creditors, as it was before, subject to the right on the part of the bankrupt to apply to the Commissioner to have his certificate granted if withheld by the creditors.

"*Q.* And subject to the right also on the part of the dissenting creditors to apply against him?—*A.* Yes.

"*Q.* What do you consider has been the injury which has been done to creditors, by putting it into the hands of the Commissioners?—*A.* I think it is left to a Commissioner who has no substantial means of forming a correct judgment upon the subject, and in consequence very inaccurate conclusions are come to by the Commissioners. The creditors are placed in a false position altogether. Certificates are obtained by parties who ought never to obtain them, and in cases in which the creditors would never have signed the certificate; but in which they will not take the prominent and obnoxious part of being opposers.

"*Q.* Do not you consider that creditors, under the old system, used rather to err from lenity than from hardship?—*A.* I do certainly.

"*Q.* Has not the Commissioner an opportunity of examining the conduct of the Bankrupt in the course of the proceedings?—*A.* He has, but it is very imperfect.

"*Q.* Has not he an opportunity of consulting the official assignees?—*A.* Yes, but that does not lead him to a sound conclusion.

"*Q.* Has not he an opportunity of consulting the trade assignee also?—*A.* He has, but the result of my observations has been that the Commissioner comes to a very unsound conclusion upon those subjects, which is rendered conspicuous to us by their giving judgments upon the subject, expressing opinions which the creditors know to be unfounded.

"*Q.* How then would the Commissioner be able to judge in case of an opposition of a creditor?—*A.* Whenever there were parties before a Commissioner, either the bankrupt himself appealing to the Commissioner to grant his certificate, or the parties opposing the grant of that certificate, there a case would be made out, and the Commissioner would decide judicially upon that case; but the difficulty arises upon the Commissioner proceeding to give a judgment, and express an opinion where he has only one side of the question before him.

"*Q.* You mean to say that in case of a bankrupt, or a creditor, coming before him by appeal, the Commissioner would have the case presented to him by the conflict of parties before him?—*A.* Precisely so. He would have the facts upon which he would give a judgment. The creditor opposing the certifica

[a] See printed Minutes, p. 202.

would have to make out his case, and the Commissioner would properly give judgment upon the evidence before him, and upon the result of his inquiries.

"Q. Would not that be liable to this difficulty, that as creditors are apt to be lenient and careless, the result might be a tendency to grant certificates, there being nobody to oppose them?—*A.* I think that would be a less evil than that of a Commissioner granting the certificate upon the result of his own investigation, and giving a judgment which was unfounded. It tends to bring justice into disrepute.

"Q. You mean to say that you have heard Commissioners in giving their reasons in public, state matters which were known to the creditors to be unfounded?—*A.* Yes."

Without desiring it to be understood that we consider the conclusions which Mr. Freshfield has come to in all respects well-founded, those who read his evidence will probably agree with us, that the clearness, distinctness, and thorough independence, with which he has stated his views upon the various points on which his opinion was called for, entitle it to more than ordinary consideration.

Little practical good could arise from minutely enquiring, at this distance of time, to what extent the alterations effected in 1831, should be considered as beneficial or otherwise. It may be conceded, as stated by Mr. Freshfield, that the change which then took place was, "upon the whole," an improvement. Still it is important to bear in mind, that no witness who has been examined, ventured to assert that the present administration of the law is altogether satisfactory, or that the law itself does not require revision and extensive alteration. Mr. Serjeant Manning's opinion on this subject, though given in a more concise form than that of many of the other witnesses examined, we incline to think expresses the sentiment of a large majority. He is asked, (printed minutes, page 216,) "Do you consider that the Bankrupt Law, as it now stands, is capable of amendment?" and his answer is, "I think it is almost incapable of deterioration!"

Of the five points, adverted to in the Report, upon which a concurrence of opinion is said to prevail, the most important undoubtedly is that which proposes to confer upon the Commissioners of the Court of Bankruptcy, "under proper guards," a direct power of penal jurisdiction. That the Comissioners should be enabled to do, directly and judicially, what is now done indirectly, without certainty, and often upon the most sordid and least creditable motives,—namely, to imprison a bankrupt who has failed in the performance of his duties to his creditors and society,—seems, as a mere abstract proposition, at once reasonable and practicable. But when we come to consider in what manner, and under what restrictions, the Commissioners should be invested with this authority, the difficulties of the subject become manifest, and may be estimated from the circumstance, that neither the Commissioners themselves, nor any two of the witnesses, seem to have come to a precise agreement of opinion on the point. For example, although all the Commissioners agree that it is desirable they should be empowered in a summary way to award punishment for fraud and dishonesty by imprisonment,—whilst Mr. Commissioner Holroyd proposes the law should specify the particular commercial frauds or offences which the Court should have power to punish, "so that the Court and suitors may know to what particular offences the penalty of imprisonment attaches, and that traders may know what they are liable to be punished for;" Mr. Commissioner Goulbourn thinks, it would be rather better not to specify the particular offences. "The frauds in Bankruptcy" (says the last-named Commissioner) "are of a class and of a character that it is extremely difficult to define, though intelligible to every one who watches the proceedings throughout, as we do, from its commencement to its close; and I think we should get into difficulties by attempting losely to define."

Between these conflicting views, we must be permitted to say, we are decidedly in favour of that recommended by Mr. Commissioner Holroyd, it is decidedly the safest, the most constitutional, and the least objectionable in principle. It seems, to our humble judgment, to be of the essence of justice, that no man should be punished, except for the violation of a known law, and "misconduct" on the part of a trader is a term too vague and general to allow it to be imported into our Criminal Law, and applied at the discretion of any individual be he ever so learned or judicious. A bankrupt's conduct, "before and after his bankruptcy," involves considerations so numerous and various, that we can easily imagine cases frequently to arise, where no judicial opinion could be satisfactorily formed, without a minute and accurate knowledge of the details of business, the principles upon which trade and com-

merce are conducted, and the habits and feelings of those engaged in such pursuits. Without questioning the efficiency of the Commissioners of Bankruptcy, individually or collectively, we may be permitted to doubt, whether every one who fills, or may hereafter fill, the office, has sufficiently cultivated this wide field of information to feel a reasonable degree of confidence in deciding and acting, without assistance or control, in every case in which the conduct of a bankrupt is submitted to him judicially, with a view to the infliction of punishment. The responsibility of awarding summary punishment might, perhaps, be advantageously divided, by conferring the power on a Court consisting of not less than three Commissioners; but no Court should be invested with authority to punish for offences not clearly and specifically defined by statute.

Mr. Commissioner Holroyd submitted to the Lords Committee a list of two classes of offences, not cognizable by indictment, and which he proposed should be punished by imprisonment for a longer or shorter period. Our limits will only permit us at present to subjoin these lists, but we shall take an early opportunity of returning to the subject.

"List of Offences.—(1st Class.)

"1st. If the bankrupt shall have contracted any of his debts in any manner of fraud or breach of trust, or without having had any reasonable or probable expectation, at the time, of being able to pay the same.

"2nd. If the bankrupt shall have contracted any of his debts by reason of any judgment, in any proceeding for breach of the Revenue Laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious prosecution of bankruptcy, or malicious trespass.

"3rd. If the bankrupt shall by any manner of fraud have obtained the forbearance of any of his debts by any of his creditors.

"4th. If the bankrupt shall, under his bankruptcy, or at any meeting of his creditors within three months next preceding thereto, have attempted to account for any of his property by fictitious losses or expenses.

"5th. If the bankrupt shall, within three months next preceding his bankruptcy, have made any fraudulent preference, or any fraudulent sale or gift of any of his property.

"2nd Class.

"1st. If the bankrupt shall have put any of his creditors to any unnecessary expense by any vexatious or frivolous defence or delay to any suit for the recovery of any debt or demand, proveable under his bankruptcy.

"2nd. If the bankrupt shall, at any time during the prosecution of his bankruptcy, or at any meeting of his creditors within three months next preceding thereto, have wilfully prevented or withheld the production of any of his books, papers, writings, or securities, relating to his affairs or conduct as a trader.

"3rd. If the bankrupt shall, during his trading, or for one year at least next preceding his bankruptcy, have omitted to keep proper books of account, or shall have kept his books so imperfectly as not to exhibit at the bankruptcy the real position of the bankrupt as to his debts and credits.

"4th. If the bankrupt shall have omitted to take stock once at least during every years of his trading."

TRIAL OF ELECTION PETITIONS ACT.

11 & 12 VICT. c. 98.

THIS Act passed the day before the close of the last Session, viz., on the 4th September, and as, in the course of a few weeks, preparations will be made for the next Session, we submit to our readers an analysis of the act intended "to amend the Law for the Trial of Election Petitions."

1. It repeals the 7 & 8 Vict. c. 103, except as to acts done, but this repeal is not to revive the 9 G. 4, c. 22.

Reception of Petitions.

2. What shall be deemed election petitions.

3. Before petitions presented recognizances to be entered into.

4. Persons entering into recognizances to make affidavits of sufficiency.

5. Form of recognizance, as set forth in schedule.

6. Persons signing election petition may pay money into the bank, instead of finding security.

7. No petition to be received unless endorsed by the examiner of recognizances.

8. How petitions may be withdrawn.

Examiner of Recognizances.

9. Speaker to appoint examiner of recognizances.

10. In case of illness, &c., of examiner of recognizances, speaker to appoint a fit person to perform the duties.

Entering into Recognizances.

11. How recognizances are to be entered into.

12. Names of sureties, &c., to be kept in office of examiner of recognizances, and to be open to inspection.

13. Recognizance may be objected to for invalidity, or for insufficiency of sureties.

14. Notice of objections to be published in the office of the examiner, and copies may be taken.

15. Examiner of recognizances to decide on the objections.

16. In case of death of a surety, the petitioner may pay the money into the bank.

17. Examiner of recognizances to report whether or not recognizances are objectionable.

Admission of Parties to Defend.

18. Proceedings when the seat becomes vacant, or the sitting member declines to defend his return.

19. Voters may become a party to oppose the petition.

20. Members having given notice of their intention not to defend, not to appear as parties.

Double Returns.

21. Provision for cases of double return where the member complained of declines to defend his return.

General Committee.

22. At the beginning of every session the Speaker to appoint a general committee.

23. If the house disapprove the first appointment, a new appointment to be made.

24. Disapproval may be general or special.

25. Members not disapproved by the house may be again named in the warrant.

26. For what time the appointment shall be.

27. Vacancies in general committee to be made known to the house, and proceedings suspended.

28. General committee may be dissolved in certain cases.

29. How vacancies shall be supplied, and re-appointments made.

30. Speaker to fix the time and place of first meeting of committee. General committee to be sworn.

31. Members necessary to enable the committee to act.

32. Committee to regulate their own proceedings.

33. Clerk to keep minutes of proceedings, to be laid before the house.

34. During suspension of proceedings the Speaker may adjourn any business before the general committee.

Panels.

35. Members wholly excused from serving.

36. Names of members claiming to be excused to be called over.

37. Members temporarily excused from serving.

38. Members temporarily disqualified from serving.

39. A corrected list, distinguishing the excused or disqualified members, to be printed and distributed with the votes.

40. Lists may be further corrected during three days.

41. Selection of members to serve as chairmen of election committees.

42. List to be divided into five panels.

43. General committee to correct the panels from time to time.

44. Power to transfer to another panel the names of members obtaining leave of absence.

45. For supplying vacancies, and increasing the chairmen's panel.

Appointment of Select Committees.

46. Election petitions to be referred to the general committee; who shall make out a list of the same.

47. Where notice of vacancy, or that the sitting member declines to defend his return, is received by the general committee, proceedings to be suspended.

48. Provision for cases where more than one petition.

49. Committees to be chosen for petitions according to their order in the list.

50. Committees to be appointed for petitions standing over on a prorogation of parliament.

51. Notice of time, &c., when any committee will be chosen shall be published with the votes. Notice of suspension of proceedings to be published and sent to returning officer by post.

52. Provision for cases where the sitting member does not defend; and no party has been admitted to defend.

53. General committee empowered to change the day for choosing election committee.

54. Notice of petitions and panels.

55. Lists of voters intended to be objected to shall be delivered to the clerk of the general committee.

56. Committee for trying petitions to be chosen.

57. In case general committee do not agree in choosing a committee to try the petition; they shall adjourn.

58. Chairman to be chosen by the members on the chairmen's panel, and his name communicated to the general committee.

59. Members upon chairmen's panel to make regulations.

60. When committee chosen, the parties to be called in to hear the names read over.

61. General committee to proceed in order with all the petitions appointed for that day.

62. Within a certain time parties may object to members on account of disqualification.

63. If General committee allow the disqualification, a new committee to be chosen.

64. In the new committee, members not before objected to may be included.

65. When committee chosen, notice to be sent to every member thereof.

66. If any member chosen proves a disqualification, another committee to be chosen.

67. Select committee to be reported to the house.

68. Members of select committee to be sworn.

69. Members of committee not present within one hour after four o'clock to be taken into custody by the Serjeant-at-Arms.

70. If any such member is not present within three hours after [illegible] o'clock, the proceedings to be adjourned.

71. If all the members not attend after adjournment, the committee to be discharged.

Proceedings of Election Committees.

72. Petitions and lists to be referred to the election committee, and time and place of meeting appointed by the house.
73. Committees not to adjourn for more than 24 hours without leave of the house.
74. Evidence to be confined to objections specified in the lists.
75. No member of committee to absent himself. Committee not to sit until all be met. On failure of all meeting within one hour to adjourn.
76. Absentees to be directed to attend the house.
77. Committee not to be dissolved by death or absence of not more than two members.
78. Committee reduced to less than three by the non-attendance of its members to be dissolved, unless by consent.
79. When committee is deliberating, the room to be cleared.
80. Questions to be decided by a majority.
81. Names of members voting for or against any resolution to be reported to the house.
82. Committees to be attended by a short-hand writer.
83. Committee empowered to send for and examine persons, papers, and records. Witnesses misbehaving may be reported to the house, and committed to the custody of the Serjeant-at-Arms.
84. How oaths to be administered.
85. Giving false evidence to be perjury.
86. Committee to decide, and to report their decision to the house.
87. Committees may report their determination on other matters to the house.
88. Committees not dissolved by the prorogation of parliament.

Costs.

89. Costs where petition reported frivolous or vexatious.
90. Costs where opposition reported frivolous or vexatious.
91. Costs where no party appears to oppose a petition.
92. Costs upon frivolous objections to voters.
93. Costs upon unfounded allegations.
94. Costs, how to be ascertained.
95. Persons appointed to tax costs empowered to examine on oath.
96. Recovery of costs when taxed.
97. Persons paying costs may recover a proportion from other persons liable thereto.
98. Recognizances when to be estreated, &c.
99. Transmission of recognizances of parties in Ireland or Scotland through the post.
100. Monies received under recognizances to be paid into the bank, and applied in payment of costs.
101. Surety may pay money into the bank in discharge of his recognizance.
102. Where money has been paid into the bank, the examiner of recognizances to order payment of expenses, and transfer the residue to the account of the party.

Miscellaneous.

103. Returning officer may be sued for neglecting to return any person duly elected.
104. Commencement of act.
105. Provision for election petitions remaining at the close of the present session.
106. No stamps on recognizances or affidavits.

NOTICES OF NEW BOOKS.

The Judges of England, with Sketches of their Lives, and Notices connected with the Courts at Westminster, from the time of the Conquest. By Edward Foss, F. S. A. of the Inner Temple. London: Longman & Co. 1848.

In the last notice of this important work, (page 66, *ante*,) we stated the general scope and plan of the author, and now proceed to consider, somewhat in detail, the prominent parts of the first volume, of which we shall select some passages from the historical surveys of peculiar interest, appertaining, as they do, to improvements projected in our own times.

With regard to the Biographical Sketches, we wish to add to our former remarks, that there was a difficult point in the general design of the work, not so much as concerns the present, as the future volumes,—namely, whether these brief memoirs should be confined strictly to the *legal* part of the career of the judges, or whether the facts of a general and more public nature should be included in them. We think Mr. Foss has decided rightly in selecting and making the most of his judicial materials. It may, for instance, be true that, to the general reader, the ecclesiastical and political life of Thomas à Beckett would be more attractive than his judicial, but we presume it was not expected by the learned author that his work would find place amongst the merely popular biographies of the day,—of statesmen, warriors, poets, and philosophers. His great object, we conjecture, was, to address himself, not only to all who now occupy the judgment seats of our various Courts, but to those who have descended from or are connected with them;—to the Bar of England, and the families of its eminent members;—to the attorneys and solicitors, whose duty it is to bring into practical operation those laws and rules of practice on which the judges have to decide;—to the magistrates, who must be peculiarly interested in the judicial history of the country. To these large classes might be added others in whose libraries, no doubt, the work will

sooner or later find its place. The field, therefore, seems wide enough for an author even of no common ambition.

It may be observed, that however unavoidably concise are many of the biographical notices of these judicial worthies, and some of which may occasionally be uninteresting to the general reader, the Historical Summaries of each Reign amply compensate for the occasional dryness of other parts of the volumes. These legal reviews cannot fail to gratify every reader who takes an interest in the progress of the administration of justice in this country. Considering the remote period to which the volumes relate—many centuries before the invention of printing—it is surprising to find how large has been the collection of materials which Mr. Foss's researches have brought together.

Whilst the author has evidently felt it impracticable, consistently with the main object of his work, and the limits within which it must necessarily be confined, to go far out of the legal career of the personages of his book, it is proper to notice that where the character of the judge has been historically conspicuous, he gives a brief but able outline. Thus he devotes between twenty and thirty pages to Thomas à Beckett, and we think that in that space more is compressed than we should have expected from the general plan of the work. Our limits do not permit us at present to enter upon any illustrations of this position, but we shall have other opportunities of adverting to the ample stores of legal lore which Mr. Foss has here accumulated.

Many of the subjects which agitate the profession in the present day have come under the notice of the author even in this early part of his labours. Thus in a remarkable way the topic on which we have often addressed our readers,—the *removal of the Courts* from Westminster to the vicinity of the Inns of Court, naturally comes under review in the reign of William the 2nd, by whom the now venerable Hall was erected. Mr. Foss has admirably handled this topic, tempering his natural leaning, as an antiquary, to preserve this fabric unimpaired as the great *locus in quo* of legal authority, with the pressing interests of the profession and the public. He thus steers his course:—

"The most remarkable event in the annals of law which occurred in this reign, was the erection of the Great Hall at Westminster. This magnificent edifice has survived the palace of which it then formed a part, and, to whatever use it may in future be applied, must ever be especially venerated as the arena of judicial contests, the cradle of our legal worthies, and the honoured spot which has given to the law itself 'a local habitation and a name.'

"The associations which arise at the mention of 'Westminster Hall' are not linked so much with the parliaments that have assembled in it, or the solemn festivals which it has witnessed, as with the high legal purposes to which it has for centuries been devoted; recalling to mind the glorious succession of venerable men who have administered justice within its walls, and of eminent advocates who have made its roof resound with their eloquence.

"Connected as it is with every judicial reminiscence, hallowed as it must be in the minds of those devoted to legal studies, it is not surprising that the recent attempts in parliament to remove the courts to another locality, and apply the ancient building to different objects, should have been looked on by many as a species of sacrilege and profanation of the *religio loci*. These feelings of reverence, however, may be indulged beyond reasonable bounds; and, while the ties of association are not to be harshly or inconsiderately broken, they ought not to be allowed to interrupt the progress of improvement, nor to prevent those changes which may be called for by the necessities of the times and the convenience of the public.

"When the persons most interested in the question—the practitioners and the suitors—are all but unanimous in their demand for the removal, it is time to listen to their complaints, and to consider whether the sentiment which gives a sort of sacredness to the spot is an equivalent for the benefits which it is believed would be derived from the change. It has been alleged that a more central position is rendered indispensable in order to meet the alteration of circumstances, the increase of litigation, and the additional number of courts and of judges. The question has not yet had a full discussion, nor will it be fairly debated till other than legal members of the legislature apply their minds to its consideration."

We think our readers will agree with us, that nothing on the subject could be better conceived or expressed than the statement here set forth, and the inference deduced from it.

In these times of purification of the halls and offices of justice,—of the prevention not only of the sale of judicial and official appointments, but of the abolition of fees of all kinds, and the substitution of fixed salaries,—it will be "*germane* to the purpose" that we extract Mr. Foss's remarks on the supposed sale of the High office of the Chancellor:—

"In the great roll of 31 Henry 1, of which a description has been already given, is an

entry, from which Madox understands, and Lord Campbell asserts, that Geoffrey (afterwards Bishop of Durham) purchased the office of chancellor for the sum of 3,006*l.* 13*s.* 4*d.* It is evident that Madox was not aware how long he had held the office at the date of that roll, as he speaks of this sum as a 'Fine *then lately* made.' What effect, therefore, the fact of Geoffrey having possessed the seal for seven or eight previous years might have had upon his opinion, can only be matter of surmise.

"The words are, 'Et idem Cancellarius debet MMM et VJ l. et XIII s. et IIIJ d. pro Sigillo.' In them, it will be observed, there is nothing about a purchase or a fine; they simply state a debt due from him to the king, for or on account of the seal; without saying when or how it was incurred, or whether it is a whole sum or the balance of a larger amount. Although it is not altogether improbable that Henry may have received some fine for the grant of the Chancery (of which, however, there is no other evidence than this entry affords), it may be worth while, before the record is accepted as positive proof of the fact, to consider whether it is sufficient in itself for that purpose, and how far probabilities operate upon the question.

"As all the great rolls previous to this have been long destroyed, the only argument that can be raised upon its contents must be founded on the presumption that the same system then prevailed which is apparent in the subsequent rolls that are extant. Now in these rolls, which contain the accounts of the various crown debtors, the common course is this:—*A. B.* renders an account, 'reddit compotum,' of what he owes as sheriff, custos, fermer, &c., for this amerciament, or for that rent or fine, &c. He pays so much by writs from the king, and so much into the treasury; and if his whole receipt is thus exhausted, the entry is 'et quietus est;' but if any balance remains unpaid, then it is 'et debet' so much; and this debet is carried over to the roll of the following year. It may be inferred, therefore, that this debt of 3,006*l.* 13*s.* 4*d.*, so declared due from Geoffrey the chancellor, is the *balance* of a larger sum of which he had rendered an account in a former year; and this becomes still more likely when its fractional amount is considered.

"The very circumstance of its being a fractional amount makes it less probable that it was the precise fine he had agreed to pay (if he did in truth agree to pay anything) for receiving the great seal: and if it was only part of a larger sum, the improbability becomes still greater, when it is recollected that money was then at least fifteen times more valuable than it is now, and that even the balance specified would be worth in present currency about 45,000*l.* "The probability," however, is almost entirely destroyed by the fact that Geoffrey was placed in the office in the early part of 1124, nearly eight years before the close of this roll: for it never can be supposed that the king, selling the office at such a rate, even without an immediate necessity for the money, would forego the possession of the tempting prize, and permit it to continue in arrear for so long a period. The only supposition that would give it an appearance of truth would be, that after Geoffrey had held the seals for some years, the king had threatened, without such an advance, to take them away and give them to some other candidate: but of this there is no evidence whatever."

Another topic of immediate importance is that of the change of the *Terms*. It will be recollected, in 1830, Lord Abinger, then Sir James Scarlett, succeeded in altering the ancient Sittings *in Banc*, in order to afford greater accommodation to the Northern Bar, of which he so long continued a distinguished member. Of late years, there have been many doubts regarding the wisdom of that alteration. For ourselves, we have no hesitation in classing the change amongst many others which have effected no improvement, and produced more inconvenience than it professed to remove.

Mr. Foss's work is particularly interesting on this subject of the Terms. We shall hereafter find an opportunity to extract his views of their origin and the alterations they underwent; but for the present must content ourselves with stating that there were clearly only three Terms, and that, so far as the argument turns upon the antiquity of their arrangement, we may free ourselves of any difficulty, for there is no ancient magic connected either with the number of the Terms or the number of the Judges. The one may be diminished in number and extended in time, and the other may be increased just as the interests of the public and the due administration of justice may require. No feeling of reverence for the olden time will be hurt or outraged by having eighteen instead of twelve judges, nor by adjusting the Sittings *in Banco*, *Nisi Prius*, or other, as may best effect an early and comparatively inexpensive decision of all matters in issue.

The persevering researches of Mr. Foss have enabled him to detect the errors and omissions of his predecessors, who have often taken authorities at second or third hand, and perpetuated the mistakes which it was their duty to correct. No doubt it would have been more agreeable to the contemporary biographers with invariable commendation, but it is clearly the duty of a public writer to correct the mistakes into which previous writers have fallen, and this Mr. Foss has done in a candid and fearless manner. Thus it seems that Lord Camp

bell" and 'Mr. Hardy are exposed to some serious complaints of remissness in their labours.

"The five reigns of Wm. 1, Wm. 2, Hen. 1, Stephen, and Hen. 2, give no less than 13 examples of chancellors incorrectly, or, at all events, inconsiderately introduced. In the reign of William the First, two chancellors are named, for one of whom no authority whatever is cited by the compiler of any previous list; and the other (misnamed by Dugdale and Lord Campbell) did not hold the seal till the following reign. In William the Second's short reign, one chancellor is brought forward, of whom there is no proof, and scarcely any presumption that he held the office. In the reign of Henry the First, there are four who ought to be omitted: one for whom the authority given is only "an anonymal pamphlett;" another was clearly only chancellor to the queen; the third is inserted upon no other ground than a loose expression (a sort of *obiter dictum*) of Leland; and the fourth from the erroneous appropriation of a charter of the next reign.

"Under Stephen, there are two who have no claim to be there; one being mistaken for his cousin, and the other having only the anonymous authority before alluded to. Lastly, in the reign of the second Henry, four chancellors are named: for the first of whom Mr. Thynne, the original compiler, from whom all the rest have copied, gives not the slightest authority; another was only vice-chancellor; the third, introduced for the first time in Mr. Hardy's Catalogue, followed by Lord Campbell, was *dead long* before the appointment of the chancellor who is named as his predecessor in office, and has no other foundation for his name being inserted in any place than the evident miscopying of a charter; and though the fourth certainly held the office of chancellor, it was to the Scottish, and not to the English king.

"There is an omission of one chancellor in the reign of William the First, besides the other in that of William the Second, who was incorrectly inserted, as already mentioned, under his predecessor: and there are various amendments in the order of the succession under the Conqueror and Henry the First, which it will be more convenient to particularize in the pages which treat of those reigns."

DELAYS IN THE MASTER'S OFFICE IN CHANCERY.

A CORRESPONDENT of *The Times* on the 19th instant, under the signature of "A Sufferer," states the following case:—

"A tradesman died about nine years ago, whose personal property was sworn under 10,000*l.*, and his debts amounted to 4,000*l.* He appointed two executors, and as they took no steps to wind up his affairs, a 'creditors' bill' was filed against them twelve months after his decease. The object of that bill was simply to ascertain what the testator owed to his butcher, baker, tailor, and other tradesmen, and also the amount of three mortgages; next to ascertain what his assets were—viz., cash, money in the funds, furniture, and leasehold houses; and finally, to turn those assets into ready money, and thereout to pay the debts. This is the sum and substance of what had to be done, and I aver, without fear of contradiction, that any accountant might have easily settled the whole matter in a couple of months at the utmost. But what has been the actual progress made? The suit has been in the 'Masters Office' eight years, and is not yet near a conclusion. Not one creditor has been paid—not one legatee under the will has received a shilling—and 2,000*l.* or 3,000*l.* has been expended in law costs. And this is the ordinary progress which a 'Master' makes in stating a common debtor and creditor account.

"This simple detail of facts needs no comment—it speaks for itself in terms which cannot be misunderstood. The unfortunate creditors and legatees, overwhelmed by ruin, gaze hopelessly at a state of things which they have no means of remedying, and ask 'Is this justice?' I omitted to mention, that all the creditors and legatees are living, and all the property is situated within ten miles of London. One of the worst features of the case is this:—The testator was trustee for a poor widow, and had at the time of his decease a certain sum of money in his hands to be invested for her benefit—enough to keep her in comfort. She has been necessarily dragged into this eight years' 'creditors' suit,' and when I last heard of her she was in the workhouse, after having expended all she could raise in endeavouring to procure a quicker adjudication.

"The 'Master,' in self-defence, will point (as the plaintiff does) to the extraordinary conduct of the executors and their solicitors—to their gross want of management, care, or even common feelings of humanity, for the luckless beings entrusted to their guardianship; but, I ask, is the 'Master'—a judge—to find any extenuation in those facts for his own apathy in suffering such evils to go on unrebuked and unchecked? His 'Report' was made four years ago; the property was actually advertised for sale three years ago, and nothing has been effected in the interim, except an accumulation of costs.

The same correspondent adds that—

"There is a suit now pending which has been in the 'Master's office' nineteen years, and of the property originally left for charitable purposes, five-sixths have already been swallowed up by law costs. I presume this suit, like that in which I am interested, will cease when all the funds in Court are exhausted—and not before."

One of our Correspondents sent an answer to the grievances above set forth, which appeared in the *Times* on the 26th instant, and seems to deserve a place in our columns:

According to the statement of "A Sufferer," the worthy testator whose will was to be carried into effect, left many creditors including, *three mortgagees*, unpaid, and made bequests to many legatees. The accounts of the creditors were to be investigated, and questions, for aught that appears, were to be decided between the legatees, on the construction of the will. How much time was occupied in these matters does not appear. There was, he says, a delay of eight years. The conduct of the executors was to blame, and their solicitors were of course *participes criminis*. But are executors and trustees not to be defended? Must they always let "judgment go by default," or the decree "pro confesso." Are they always in the wrong? Well may it be said that "Men are made trustees for their sins." In addition to their trouble and responsibility, they are subject constantly to censure for coming short of the wishes of their *cestui que trusts*, if they discharge their duty by preserving the property according to the strict terms of the trust; and if they yield to the persuasions of the parties interested and vary the security, they are liable for the reinvestment of the fund, and the loss of their costs. It may sometimes therefore be excusable if they appeal to the protection of the Court, and relieve themselves from responsibility by letting conflicting parties fight out their disputes at their own expense.

So far as to executors and trustees, accused of delay: then of the solicitors who assist them. Now the truth is, that the interest of solicitors undoubtedly consists in expediting Chancery proceedings. Of all matters conducted by practitioners in the Superior Courts, the largest outlay by far is made in suits in Equity. No part of the costs is paid until the termination of the suit, unless (which rarely happens) the client is able to make advances independently of the property in question. The Court takes care to preserve the fund intact until the case comes on finally for further directions; it is, therefore, palpably the interest of the solicitor to hasten the suit to an end.

The delay, so far from being beneficial to the solicitor, is in the vast majority of instances decidedly prejudicial; for, if a suit should last for nineteen years, as stated by "A Sufferer," the common interest at five per cent. on the advances made for fees of court, counsels' fees, and fees of the numerous officers connected with the various proceedings in a cause, will far exceed the charges of the solicitor for attendances, correspondence, and preparing papers. I remember a case in the time of Lord Eldon, where an attempt was made to compromise a suit, and the principal impediment was the large amount of costs. The solicitor offered to take the mere money disbursed with four per cent. interest, but the opposite party would not accept the offer, because on a taxation of costs their amount would be less than the interest.

Notwithstanding these points of justification in behalf of the solicitors, I fully admit that *the expense and delay in the Masters' offices constitute a great grievance both to the public and the profession*, and that this expense and delay might be to a large extent readily removed.

It may be natural to impute to the lawyers the causes of delay in the Masters' Offices, but a few facts will satisfy you that they are not responsible for at least the larger part of that grievance. A few years ago there were only two judges in the Court of Chancery, there are now five. These five judges are daily making orders of reference to the Masters. Now the number of the Masters remains the same. If ten Masters were requisite to carry out efficiently the orders of two judges, (according to Cocker,) twenty-five are necessary to execute the behests of five judges; but practically I contend for no such increase of the Masters. I think that the same number of Masters, with an increased staff of efficient chief clerks, and an improved system of proceeding would for the most part satisfactorily despatch the business.

Amongst other changes, I would suggest that instead of the Master or his clerk sitting for an hour on each case (but which is usually only half or three quarters of an hour), at the distance of two or three weeks from each other, the warrants should be granted continuously for several hours in each day, whereby a large section at least of inquiry in each case might be completed. According to the present system of "hourly warrants" at intervals of several weeks, a considerable part of the time at every renewed meeting is taken up in reminding the Master of the state of the case at the last attendance before him.

I conceive that the chief clerk or assistant Master (as he really is), who has to deal with the vast details of business affecting many millions of property annually, should be a person of great professional experience, well conversant, not only with the principles and technicalities of the law, but practically acquainted with the nature of the complicated transactions which from time to time come under the cognizance of the Court of Chancery. An attempt has been recently made to raise the character and qualification of these officers, and render them better fitted for the discharge of the various duties which devolve upon them; but I regret to say, that in a recent instance (and whilst a bill is before Parliament to remedy the defect) one of the Masters has pursued the old practice, and promoted to the office of chief clerk, a writer in the copying department, whose previous avocations could not possibly render him competent to discharge the important duties of the office.

The remedy for the evil, I beg to repeat, would be mainly effected by increasing the number of efficient clerks, and altering the practice from short and incomplete to continuous hearings; at the same time, providing for the retirement of very aged and infirm Masters, and appointing such as have had considerable practice at the bar and are willing constantly to attend to the duties of the office.

ATTORNATUS.

LAW OF ATTORNEYS.

BILL OF COSTS.—MORTGAGOR AND MORTGAGEE.—NON-LIABILITY OF DEFENDANT FOR INTENDED MORTGAGEE'S COSTS.

[We are much obliged to the solicitor who has communicated to us the particulars of the following case, which ought to be generally known to the profession.]

An action was brought for an attorney's bill for work done in investigating the title of the defendant to certain leasehold premises, upon which a sum of money was proposed to be borrowed by way of mortgage. The defendant resisted the claim on the ground that the plaintiff was not his solicitor, but had acted for the intended mortgagee.

At the trial, before Mr. Burchell, the Undersheriff, on the 16th of March last, it was proved by the plaintiff's clerk, on the part of the plaintiff, that the defendant called on the plaintiff, and requested plaintiff to lend him 900*l.* or 1,000*l.* on the security of two leasehold houses in Acacia Road, St. John's Wood; that plaintiff said he would lend the money provided the security was ample; that defendant furnished plaintiff with an abstract of his title, which plaintiff laid before his conveyancer, Mr. Phillips, with instructions to peruse the same on behalf of a mortgagee; that an additional abstract was afterwards furnished, and also laid before Mr. Phillips; that defendant wrote answers to plaintiff's requisitions; that the negotiation afterwards went off, as the abstract did not disclose the lessor's title. Mr. Phillips was called on the part of plaintiff, and proved that the abstracts referred to were laid before him, and that he wrote his opinions thereon; that the sum of 4*l.* 4*s.* had been paid to him by plaintiff. And on cross-examination, Mr. Phillips proved that solicitors very commonly lent money on leaseholds without having the lessor's title disclosed, but that he could not recommend it; that he was instructed to advise on behalf of a mortgagee, but was not told who he was. For the defence, it was contended that the action was not maintainable; that plaintiff was not employed to act as defendant's attorney, nor could he be considered as acting for both parties in the negotiation; and the case of *Pratt* v. *Vizard*, 5 Barn. & Adol. 808, was cited and relied upon.

The learned Undersheriff then told the jury he was of opinion that the plaintiff, upon the evidence adduced by him, was entitled to a verdict,—and a verdict was accordingly given for the full amount claimed, but, by consent, leave was given to move to enter a nonsuit.

Mr. *Prentice*, in Easter Term last, applied for a rule to show cause why the verdict entered for the plaintiff should not be set aside, and a nonsuit entered, or why a new trial should not be had, or the verdict reduced to 4*l.* 9*s.*

Mr. *Thomas* showed cause. The plaintiff considered that he was acting in his character of attorney to raise money for defendant on mortgage, and accordingly investigated the defendant's title to the premises proposed to be mortgaged, and had the money ready to lend, but the negotiation went off by default of defendant, by reason of defendant not disclosing the lessor's title. The plaintiff had paid certain fees to Mr. Phillips for perusal of the abstracts, and confidently submitted that he was entitled to be repaid those fees, as well as to be paid the amount of his bill for the work done by him.

Mr. *Prentice*, contrà. The plaintiff is the attorney of the mortgagee, not of the mortgagor. He was not employed by defendant as his attorney. The defendant acted for himself in the negotiation. The evidence of Mr. Phillips proved that the abstracts were laid before him on behalf of a mortgagee, and Mr. Phillips advised accordingly. There was no written agreement between plaintiff and defendant that the defendant should pay the expenses of the negotiation if the mortgage should not be completed. Had the mortgage been completed, the defendant certainly would have had to pay all the mortgagee's expenses; but as the mortgage was not completed, the defendant contended that he was not liable to pay any expenses, and he relied on the case of *Pratt* v. *Vizard*, 5 Barn. & Adol. 808.

Per Curiam. This rule must be made absolute. The authority of *Pratt* v. *Vizard* is quite in point. It does not appear that the plaintiff acted as the attorney for the defendant, who being an attorney, was able to look after his own interests. But that he (the plaintiff) acted for the mortgagee, to whom, in the absence of any written agreement binding on the defendant to pay the expenses incurred, he must look for payment.

[Rule absolute to enter a nonsuit.

THE PUBLIC HEALTH ACT.

The details of this Act are too voluminous to be comprised within our pages; and we are the less disposed to give them place at the expense of excluding a great variety of important matter, because an excellent Edition of the Act, at a moderate cost, has been issued by Mr. Edward Lawes, who was engaged under the Attorney-General in preparing the Act and assisting in its progress through parliament.[a]

The notes of Mr. Lawes are exceedingly valuable. He explains with great precision the several objects of the Act, and the various provisions for carrying them into effect. In many instances he has subdivided the sections into distinct paragraphs where the sense admitted, and added new marginal abstracts. By these means the intention of the legislature is more clearly perceived, and he has taken much pains in referring from one section to another wherever such references could be useful.

Not only has the marginal abstracts of each section been examined, and where necessary enlarged, but the text has been carefully compared with the original engrossment of the Act. In a few instances it varies from the copies issued by the Queen's printers before the 9th of Nov., and corresponds with those subsequently printed. We do not wonder that occasional mistakes should happen,—seeing that amendments are made in Bills in Parliament up to the last moment before they pass, and the Act is of course printed from the Bill. Familiarly acquainted with the present Act in all its various stages, and detecting instantly the mistakes which had been made, Mr. Lawes was bound to point them out, in order that they might be corrected.

In all cases of legal process under the Act, it will be prudent to procure one of the copies issued since the 9th November, or to compare the clauses in question with Mr. Lawes' edition.

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[a] The Act for promoting the Public Health, with Notes, an Analytical Index, and (by way of Appendix) the Nuisances Removal and Diseases Prevention Act, 1848, some additional Forms, and a Table of Rates levied under the Public Health Act. By Edward Lawes, Esq., Barrister-at-Law. London: Shaw and Son, 1849. Pp. 330.

PALACE COURT PRACTICE.

To the Editor of the Legal Observer.

Well, Sir,—The day, "the great eventful day," arrived at last,—"a day that will be lang minded" by Mr. *Z.* and his "representative." "*B.* ats. *A.*—hearing in the *Palace Court*—conjoined processes"—stood in the Cause Paper for Friday last, the 22nd. Ah! Mr. Editor, poor Peter Peebles, after all, was right; it is, it must be, "grandeur upon earth to hear ane's name thunnered out alang the long arched roof of the outer Court; a' the best lawyers fleeing like eagles to the prey, some because they are in the cause, and some because they want to be thought engaged in it."

Mr. *Z.*'s first witness was—I am bound to say it—a straightforward and impartial man; if his examination in chief proved Mr. *B.*'s, the plaintiff's case, his cross-examination established that of the defendant. To him succeeded a witness, who roundly made oath that the defendant, Mr. *A.*, had admitted his liability, and engaged to liquidate Mr. *B.*'s, the house agent's bill. Need I tell your readers, Sir, that Mr. *A.* had in fact never before enjoyed the privilege of even beholding this conscientious man? A third witness proved "the custom of his trade" to be, "always to charge those customers who asked questions, whether he executed their commissions or not," and "whenever he received the money, forthwith to put it into his pocket." Two or three witnesses were then examined for Mr. *A.* The plaintiff's counsel, as is customary, replied, and plainly told the jury, that unless they believed that his client's witnesses had committed wilful and deliberate perjury, they (the jury) must pronounce a verdict for Mr. *B.*, (the plaintiff.) The learned judge summed up,—what the twelve gentlemen in the jury-box believed or disbelieved, I know not, but such of your readers as like "Guesses at the Truth," may possibly infer their opinions from the fact, that they forthwith returned a verdict for the *defendant*, whereupon the Court adjourned, and Mr. *A.* and I went on our way home rejoicing. Not so the luckless "representative,"—he, when he reached Clifford's Inn, encountered, I am afraid, rebuke, and this, not because he had wanted zeal, but that he had lacked discretion; had he, as the vulgar saying is, "kept his tongue between his teeth," his employer might have pocketed his own bill of costs. Mr. *Z.* has, like Trinculo, "encountered not only dishonour, but an absolute loss."

Sir, I have informed you that Mr. *A.* and I returned to our homes rejoicing; we had good cause to triumph, having, as Mr. Locke well expressed it, "at once got rid of an error, and obtained a new and a correct idea." We had convinced ourselves, as every one else may do, who will take the trouble to examine ere he judges, and to think a little before he rails, that the Palace Court is governed by the same

rules of evidence as regulate the proceedings of every other court of justice in the land. Among the six "practitioners," three are, I can from my own personal knowledge vouch it, high-minded, honorable, and well-educated gentlemen; to a fourth, I have not as yet had the honour of an introduction, but our common friends who do know him, speak of him with respect invariably; for the fifth, I have once, and but once met him professionally, and I then received much courtesy, as well from himself as from his partner. I did most certainly consider them a little unfortunate in their client,—yet, as Moses told our old acquaintance, "little Preminm,"—"Your friend is truly an unconscionable fellow, but then, you know, you can't help that;" for the sixth "practitioner," Mr. *Z.*, is—Mr. *Z.*, and there's an end on't. LEGALIS.

Temple, 26th Dec., 1848.

ATTORNEYS TO BE ADMITTED.

Hilary Term, 1849.

Queen's Bench.

[Concluded from our last Number, p. 153, *ante*.]

Clerks' Names and Residences.	*To whom Articled, Assigned, &c.*
Lupton, Thomas, 4, Keppel-street, Russell-square	Samuel Appleby, Harpur-street, Red-lion-square; and King's-road
Looker, John Billingsley, 82, Farringdon-street	John Looker, Oxford
Lightfoot, Alfred, Claremont-terrace, Pentonville	James Peachey, Salisbury-square
Langdon, William Spicer, Crewkerne; and 5, New Millman-street	William Sparks, Crewkerne
Little, George Hutchinson, Mornington-crescent, Hampstead-road	D. Gray, Lincoln's-inn-fields; C. Clarke, ditto; J. Woodcock, ditto
Murray, Archibald, Porchester-terrace, Bayswater	John Murray, Whitehall-place
Mann, Edward, Manchester	John Owen, Manchester
Morris, John, Ashby-street; River-street; and Warwick-court	Griffith Jones Williams, Dolgelly
Merrils, Josiah, Epworth	George Hawksley Capes, Epworth
Middleton, William Tym, Stone	John Tym Middleton, Stone
Morris, John Weston, Lower Clapton	John Mitchael Morris, and Co., Bank-chambers; and Moorgate-street
Mears, St. John John, Eversley; Bagshot; and Diddington-place, King's-cross	John Mears, Bagshot
Matthews, John, 6, Maberly-place, Islington	Hull Terrell, Basinghall-street
Maddock, Charles, 3, Brunswick-row, Queen-square; Lincoln's-inn-fields	Alfred Bell, Lincoln's-inn-fields
Morrison, George Carter, 21, Granville-square, Pentonville; and Dorking	Alexander Hart, Dorking; Charles James Abbott, New-inn, Wych-street
Mason, Joseph, York	William Jackman, York
M'Dermott, Robert Holland, Grove-terrace, Kentish-town	Edward Thomas Whitaker, Lincoln's-inn-fields
North, William, Leeds	Edwin Eddison, Leeds
Noakes, Benjamin Tompsett, Ticehurst; Buckingham-street, Strand; and Greenwich	Thomas Baker, Lime-street
Owen, Thomas, 47, Walcot-square, Lambeth	William Jones, 2, St. Mildred's-court
Oates, Joseph Henry, jun., Leeds; Millman-street; and Brompton	Robert L. Ford, Leeds
Poley, Walter Johnson W., Bury St. Edmund's; Weymouth; and Southwold	Richard Almack, Long Melford
Parker, Thomas, 1, Cross-street, Southgate-road; and Blackburne	Peter Ellinthorpe, Blackburne
Patteson, Thomas, Brixton-hill; Hampstead-road; and Kirkby Stephen	Samuel Brabner, Liverpool; Middleton Hewitson, Kirkby Stephen
Parsons, Arthur, 17, Vincent-terrace, Islington; St. James's-street; Nottingham; Linton	Samuel Parsons, Nottingham
Palmer, Charles Edward, 23, Wakefield-street; and Doncaster	William Palmer, Doncaster
Poole, Edward, Belgrave-street, Pimlico; Margaret-street, Cavendish-square; and Kenilworth	William Savage Poole, Kenilworth
Phillips, George, Scarsdale-terrace, Kensington; Wem, Salop; Shiffnal; and Brompton	Henry John Barker, Wem
Phillips, Thomas, jun., 7, Wells-street, Gray's-inn-road; Featherstone-buildings; and Plymouth	Thomas Phillips, sen., Plymouth

Perry, John Connorton, Blandford-terrace, Bermondsey; and Somerset-place, Camberwell	Abraham Cutto, Back-street, Southwark
Page, George, Balsall-heath, Worcester	George Augustus Page, Birmingham
Pearce, William Peter, Grove-hill, Camberwell	John Meriscoe Pearce, St. Swithin's-lane
Pocock, Edward Innes, 27, Lincoln's-inn-fields	John I. Pocock, Lincoln's-inn-fields
Pulman, William Thrush, 2, Holywell-place; and Vincent-square	Edward Hemingway, Leeds
Randall, Edward Brodribb, 29, University-street; and Shirley	James Chaldecote Sharp, Southampton
Rowley, L. Pemberton, 14, Alfred-street; Bedford-square	John Rawlins, Birmingham
Russell, James, 23, St. Martin's-lane, Cannon-street	Robert Russell, 23, St. Martin's-lane, Cannon-street
Rasbleigh, Philip George, 4, Acton-street, Gray's-inn-road; Maidstone; and Wickham	John Slade, Devizes; Joseph Randolph Mullings, Cirencester
Roberts, Richard Willett, 56, Broad-street, Worcester	Richard John Roberts, Worcester; and 17, Lincoln's-inn-fields
Rhodes, Frederick Jackson, Market Rasen	Thomas Rhodes, Market Rasen
Radford, Edward Vaughan, 2, Judd-street, Brunswick-square; and Atherstone	Henry Radford, Atherstone
Roby, William, Liverpool	Thomas Rogerson, Liverpool
Rowden, Charles Wetherell, 13, South-square, Gray's-inn; and Peterborough	Frederick John Jenkins, Peterborough; John Glenton Atkinson, ditto
Rodwell, Hasell, Great Russell-street, Bloomsbury; and Ipswich	G. Constantine E. Bacon, Ipswich; Chas. Steward, Ipswich
Robinson, Charles Thomas, St. Neott's; Hampstead; and New Milman-street	O. R. Wilkinson, St. Neott's, W. M. Benett, Raymond-buildings
Richardson, George, Chorlton-upon-Medlock, near Manchester	Thomas Potter, Manchester
Saunders, George Morley, Lynn	Lewis Weston Jarvis and Co., Lynn
Smith, Hubert, 5, Princes-street, Bedford-row; and St. Leonard's, Bridgnorth	John Jacob Smith, St. James's Bridgnorth
Stark, Robert Mozley, 8, Halliford-street, Islington; and Wakefield	John Moore Janson, Wakefield.
Smith, George, 9, Tokenhouse-yard; Islington; and Salisbury	John Lush Alford, Salisbury
Stokes, John William Noble, Hampstead; Preston; Manchester-street; Wakefield-street; and Danvers-street	Charles Buck, Preston; William Dickson, Preston
Smith, Edward Harford, Highbury-crescent, Islington; Tyndale-place; and Chancery-lane	Edward Smith, Highbury Crescent, 5, Chancery-lane
Sharpe, Gillies Payne, 90, Wimpole-street; and Lincoln's-inn-fields	Samuel Steward, Lincoln's-inn-fields
Sutcliffe, Richard Clegg, Burnley	R. Shaw, Burnley; B. Artindale, Burnley
Smith, Frederick, 13, Caroline-street, Bedford-square	W. W. Smith, Southampton-street; A. Turner, Red-lion-square; W. Withall, Parliament-street
Sandys, William George, Piazza, Covent Garden	William Sandys, Gray's-inn-square
Smith, Charles, 8, Hackney-grove, Hackney	T. Bentley Hudson, 16, Finsbury-place, South; T. Baker, Lime-street
Shepard, Horace, Usk	John Shepard, Usk
Stafford, Thomas, 13, Buckingham-street, Strand; and Man-street, Chelsea	William Stafford, Buckingham-street, Strand
Smith, George Moore, 22, Webb's County-terrace, New Kent-road; and Whittlesey, Ely	John Peed, Whittlesey
Smith, Baker, Denmark-street, Camberwell; and Basinghall-street	Baker Peter Smith, sen., Denmark-street; and Basinghall-street
Simmons, Frederick George, 25, Camden-street, Camden Town	Henry Hall, New Boswell-court
Savage, Robert, jun., Montague-place, Russell-square	Francis Broderip, New-square, Lincoln's-inn
Senior, Thomas, Wakefield	Henry Brown, Wakefield
Saunders, T. J. Goulding, 20, Ely-place; and Hammersmith	Thomas Saunders, Guildhall
Tucker, Samuel Ward, 9, Tokenhouse-yard; and Islington	Philip Mathews Chitty, Shaftesbury
Thorney, John Joseph, Worcester; and Kingston-upon-Hull	John Thorney, Kingston-upon-Hull; Thomas Elgie, Worcester
Tweedie, Alexander Forbes, Greenwich; and Ely-place, Holborn	Matthew Hale, Ely-place; Frederic Lewis Austen, Ely-place
Templer, Charles Copeland, Greenwich	James Templer, Bridport
Templer, William Force, 19, Mortimer-street; and Launceston	John Lethbridge Cowlard, Launceston
Toynbee, Samuel, Albert-street, Regent's-park; and Heckington-grange	John Boyfield Millington, Boston
ner, James August us, 37, Queen-square; Bloomsbury	A. Turner, Staplegrove; T. H. Strangways, King's-road, Gray's-inn

Taylor, Robert, 4, Vere-street, Cavendish-square	Samuel Potter, King's-street, Cheapside
Tomkin, Alfred Royce, 2, Regent's-place, West	George Josselyn, Ipswich
Taylor, Frederick, 6, New Bond-street	Walter Ephraim Goatly, Cork-street
Twigg, Francis, Buralem; Brompton; and Pimlico	William E. Twigg, Buralem; Benjamin Price, Ironmonger-lane
Thornton, Henry Australia, 3, Southampton-place, Camberwell	George Abraham Crawley, 20, Whitehall-place
Thursfield, John Hunt, 5, St. James's-terrace, Camden-town	Charles Hunt, Wednesbury
Tomlin, George Taddy, 1, New-court, Temple; Canterbury; and Sidmouth-street	George Furley, Canterbury
Vallotton, Theodore James, 2, Hyde-park, Kensington-gore	Francis Philip Hooper, Sackville-street, Piccadilly
Varley, Alphonso Rowland, 8, Buckingham-street, Strand; Snaresbrook	M. Dawes, Bolton-le-Moors; Charles F. Skirrow, Bedford-row
White, William, Manchester; and West Hulme	William Lister Welsh, Manchester
Whitehurst, Edward Capel, Wandsworth	Oxley Tilson, Coleman-street; Thomas Tilson, Coleman-street
Wilson, Thomas, Maida Hill, West	J. Briggs Dickson, Preston; T. Wright Nelson, Throgmorton-street
Wright, Joseph, Doncaster	Thomas Blackwell Mason, Doncaster
Wells, William, Upper Phillimore-place, Kensington	Robert Botherton Upton, Austen Friars
White, Lindsell Fletcher, Bedford-row	John Thomas White, Bedford-row
Walters, Laundy, Tottenham	Stephen Walters, Basinghall-street
Ward, Thomas Robinson, Wolverhampton; and Verulam-buildings	Thomas Chubb, Malmsbury
Winfred, William, 233, Regent-street; and Hart-street, Bloomsbury	Charles Addis, Great Queen-street, Westminster
Worship, Starling Day, Sudbury; and Upper-North-place, Gray's-inn-road	Wm. Worship, Great Yarmouth; G. W. Andrews, Sudbury
Warner, Charles, 4, Lower Calthorpe-street; Odiham; and Lamb's Conduit-place	George Lamb, Basingstoke and Odiham; William Phelps, Red-lion-square
Wills, Thomas Edward, Shaftesbury	Thomas Wills, Shaftesbury
Watkins, Thomas Powell, Harpur-street, Red-lion-square; and Albany-terrace, Britannia-square	Charles Bedford, Worcester
Wood, Henry Eycott, Thrupp; Stroud; and Upper Clapton	Henry Harris, Cainscross.
Woodley, Charles Henry, 28, Bedford-row; Teignmouth	John Whidborne, Teignmouth
Added to the List pursuant to Judges' Order.	
Burrell, William Beckett, Wakefield	John Scholey, Wakefield
Eady, George James, Campsbourne, Hornsey	Thomas Chubb, Malmsbury
Drummond, Nelson, 46, Swinton-street, Gray's-inn-road; and Cockermouth	Robert Benson, Cockermouth
Goodere, John Henry, Anderton's-hotel, Fleet-st., Upper Charles street; Llandovery; Riverstreet; Arundel-street	D. L. Harries, Llandovery
Griffiths, Stephen Wells, 34, Queen-square, Bloomsbury; and Cheltenham	George Edmunds Williams, Cheltenham
Hayward, Charles Edwards, 49, Bernard-street, Russell-square; and Browfort	T. Waters, Winchester; B. M'Leod, Paper-buildings, Temple
Payne, George, Hadleigh	Henry Offord, Hadleigh; John Frederick Robinson, Hadleigh
Simpson, William Balcombe, St. Alban's	Thomas Ward Blagg, St. Alban's

NOTES OF CASES IN AND AFTER MICHAELMAS TERM.

MARRIAGE IN FRAUD OF THE STATUTE.—SETTLEMENT.

By the 4 Geo. 4, c. 76, s. 23, (the Marriage Act,) it is enacted, that where a marriage of a minor is procured by a false oath, or knowingly without the consent of the parent or guardian, the Court, upon the information of the Attorney-General, shall have power to declare a forfeiture of all interest in any property accruing to any party so offending by force of such marriage, and thereupon to order that all such estate, right, title, and interest in any property as shall then have accrued, or shall thereafter accrue, to such offending party by force of such marriage, shall be secured under the direction of such Court for the benefit of the innocent party, or of the issue of the marriage, or of any of them, in such manner as the Court shall think fit, for preventing the offending party from deriving any interest in real or personal estate, or pecuniary benefit from such marriage." The defendant having married the daughter of the relator, without his consent, a suit was instituted for the purpose of having it declared that the husband had forfeited all interest in the property which should

accrue to him by force of the marriage, and to have the property settled. At the hearing of the cause the forfeiture was declared, and it was referred to the Master to approve of a settlement for the benefit of the wife, and the issue of the marriage. The Master approved of a settlement whereby the whole of the property, with the exception of one-third of the personalty, was to be settled for the exclusive benefit of the wife and the issue of the marriage. The one-third, however, of the personalty was to be in trust for the wife absolutely, if she survived her husband; or in trust for such uses as she, notwithstanding her coverture, should by deed appoint if she died in the lifetime of the husband.

On exceptions to this report, the *Court* decided that the wife should not have a power of appointment over any portion of the property in her husband's lifetime, as she might exercise such power in favour of her husband. But it was proper that she, being the innocent party, should have a disposing power over part of the property after their joint lives. The settlement must, therefore, give the wife a power of appointment over one-third of the personalty by will amongst the children of the marriage, which would prevent the husband from reaping any benefit under such appointment; and in the event of her surviving both husband and children, she would have an absolute power of appointment as to this one-third. *The Attorney-General* v. *Lucas*, Lord Chancellor's Court, Nov. 24, 1848.

WILL—LEGACY—ABSOLUTE INTEREST.

A testator, by his will, gave to his daughter a legacy of 15,000*l.*, to be kept in trust by his executors, and the interest accumulated until she attained twenty-one, or married with the consent of half of his executors then living, and of her mother; in which cases the legacy, with the accumulated interest, was to be settled on the daughter; but, failing her attaining 21, or having issue by such marriage, then that sum was to devolve, one half to his residuary legatees, and the other half to his other child, not then born." The daughter attained 21 without being married, and the point raised was, whether she was entitled to the legacy absolutely, or whether it was to be given to her and her children in strict settlement.

The *Court* held that the testator had not directed a settlement to be made of the fund, except in the case of his daughter marrying with consent under 21, and that she was therefore entitled to the legacy, together with the interest absolutely. *Arnold* v. *Arnold*, Vice-Chancellor of England, 18 Nov. 1848.

RECENT DECISIONS IN THE SUPERIOR COURTS

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls' Court.

Lewis v. *Baldwin*. Nov. 15, 1848.

PARTIES.—ANSWER.—ORDERS OF AUGUST, 1841.

The Court refused to come to any decision upon a defendant's objection for want of parties, under the 39th Order of Aug., 1841, in a case where the decision as to that point was liable to be affected by the decision upon other matters in dispute in the cause.

THIS cause came on upon an objection for want of parties, under the 39th Order of August, 1841. The object of the bill was to have certain sums subscribed in respect of a company for forming a railway in Ireland, called the Midland and Great Western Extension Railway, from Mullingar to Galway, which was alleged to have come to an end, distributed among the shareholders. It was filed by the plaintiff on behalf of himself, and all other shareholders. The important facts of the case were as follow: In the year 1845, a company was formed for making a railway, called the Midland and Great Western Railway Company, from Dublin to Mullingar. There was also projected the railway first mentioned. The company for prosecuting this scheme was constituted by two deeds, of the 22nd and 23rd October, 1845, which contained certain powers for varying the undertaking, it being also recited, that there was an intention of amalgamating the two companies. The plaintiff and many other parties had executed these deeds, and considerable sums of money were paid in respect of the shares in the undertaking. No application however was made to parliament under these deeds, but part of the proposed railway, from Mullingar to Athlone was made under an act obtained by the Midland Counties Railway Company, by which the new branch was amalgamated with that company. The provisional committee originally formed for carrying out the Midland and Great Western Railway Extension to Galway, the greater part of whom were directors of the Midland Counties, considering the act obtained to be substantially an execution of the original scheme, and within the powers given by the deeds before mentioned, applied the money subscribed towards it, and this proceeding had been approved of by a large proportion of the shareholders.

Mr. *Roupell* and Mr. *Goldsmid*, in support of the objection, contended, that according to the general rule of the Court a plaintiff can only represent all the members of a partnership, when that which he asks must be for the benefit of all the parties. Dictum of Lord Cottenham in *Apperly* v. *Page*, 1 Phill. 784; *Lovell* v. *Andrew*, 11 Jur. 835. That here the object of the bill could not be assumed to be for the benefit of all the partners, as it sought to have the partnership declared at an end. *Sharp* v. *Day*, 1 Phill. 771; and that all the other shareholders must be made parties. They referred also to *Richardson* v. *Lamport*, 2

Y. & C. Ch. 597; and *Lund* v. *Blanshard*, 4 Hare, 9.

Mr. Turner and Mr. *Anderson*, for the bill, contended, that either the Midland and Great Western Extension Railway Company had come to an end, as they maintained it had, in which case the application of the monies subscribed for making it to any other purpose, was a breach of contract which any partner might apply to the Court to restrain. *Colman* v. *Eastern Counties Railway Company*, 10 Beav. 1; *Lovell* v. *Andrew*, 15 Simons, 581; or, if it was amalgamated with the Midland Railway Company, as the defendants contended, then all the shareholders were sufficiently represented by the company which was before the Court, and that at all events the directors of the Midland Counties who were before the Court, and many of whom had been provisional directors of the Extension Company, sufficiently represented any of the shareholders in that company who might have an interest different from the plaintiff.

Lord *Langdale* said, that he did not see how he could decide the question of amalgamation in the present stage of the case, and if the question of amalgamation must be decided before the question of parties could be decided, how could he now decide that question at present? In simple cases this mode of proceeding by way of objection upon the answer might be convenient; but it was not so in such a case as this, when so much must depend upon the facts proved. He could therefore come to no decision on the objection, but the costs must be costs in the cause.

Vice-Chancellor of England.

Rimell v. *Simpson*. Nov. 16, 1848.

INTEREST ON LEGACY.—EXECUTORS.

A legacy to an infant was invested by the executors in the 3 per cent. consols. on the infant attaining 21: Held, that the executors ought to have paid the legacy into Court in the first instance, under the Legacy Act, and that they were therefore liable to pay the legacy with interest, at 4 per cent., from six months after the death of the testator.

ELIZABETH BOLTON by her will gave several legacies, and amongst others one of 50*l.* to the plaintiff, Selina Rimell, payable within six months after her decease. The testator died in 1846, and at that time the plaintiff was an infant, and the executors in consequence invested the money in the 3 per cent. consols. Upon her obtaining 21, she claimed the legacy, together with interest at 4 per cent., this the executors refused to pay, and the present suit was the consequence.

Mr. *Bethell* and Mr. *Rogers*, for the plaintiff, contended, that the executors ought to have paid in the legacy under the Legacy Act; 36 Geo. 3, c. 52, s. 32; and not having done so, they were liable to pay the legacy with interest at 4 per cent.

Mr. *Stuart* and Mr. *Walford*, contra. The object of the executors in not paying the money into Court under the Legacy Act, was to save the expense necessarily attendant upon such a proceeding, and if it had been paid in the legacy would only have carried interest at 3*l.* per cent. It was therefore a most grievous thing that the executors, who had done the best in their power for the legatee, should have the present proceedings taken against them, especially as the other legatees had assented to what had been done; at all events, if it should be held that they were liable to pay the sum demanded, they ought not to pay the costs of the suit.

The *Vice-Chancellor* said, the executors might have protected themselves from all liability, by paying the money into Court under the Legacy Act; they had not done so, and therefore the plaintiff was entitled to a decree with costs.

Queen's Bench.

(Before the Four Judges.)

The Queen v. *Hinde*. Michaelmas Term, 1848.

CORONER.—JURISDICTION.—6 & 7 VICT. c. 12.

Where a body was found in the river Medway within the jurisdiction of the Admiralty coroner, but first brought to land in the county of Kent within the jurisdiction of the coroner for the county of Kent, who there held an inquest on the body:

Held, that since the passing of the 6 & 7 Vict. c. 12, the inquest was properly held.

A RULE *nisi* for a writ of certiorari had been obtained on the application of the coroner of Rochester to remove into this Court an inquest held by John Hinde, coroner for the county of Kent, at Chatham, on the body of a female child. It appeared that Mr. Lewis is coroner for the city of Rochester, and Mr. Hinde coroner for the county of Kent. The body was found in the river Medway, and was brought to land at a place in the county of Kent, and within the jurisdiction of the county coroner. Mr. Lewis, as coroner for the city and borough of Rochester, has concurrent jurisdiction with the Admiralty coroner to hold inquests on all bodies found dead upon or within the river Medway, and any creeks and branches thereof within the flow and reflux of the tide, and there being no coroner for that district appointed by the Admiralty, Mr. Lewis claimed jurisdiction to hold the inquest on the body so found in the Medway. The statute 6 & 7 Vict. c. 12, s. 1, enacts—"That the coroner only within whose jurisdiction the body of any person upon whose death an inquest ought to be holden, shall be lying dead, shall hold the inquest, notwithstanding that the cause of death did not arise within the jurisdiction of such coroner; and in the case of any body found dead in the sea, or any

creek, river, or navigable canal, within the flowing of the sea, where there shall be no deputy-coroner for the jurisdiction of the Admiralty of England, the inquest shall be holden only by the coroner having jurisdiction in the place where the body shall be first brought to land."

The *Attorney-General* (Sir John Jervis) showed cause. In *Regina* v. *Hinde*,[a] this Court held that the coroner for the city of Rochester could not hold an inquest on a body found dead in the river Medway, but brought to shore in the county of Kent, although afterwards taken within the city of Rochester. The proviso in the first section of the 6 & 7 Vict. c. 12, does not control the general enacting part. The inquest is now held by the coroner within whose jurisdiction the body is found lying. By the common law the county coroner had concurrent jurisdiction with the Admiralty, and the proviso in the late statute seems to leave the jurisdiction of the Admiralty coroner as it was before the act passed, and there does not appear to be any coroner appointed by the Admiralty.

Mr. *Petersdorff* in support of the rule:—The statute 6 & 7 Vict. c. 12, has founded an entirely new jurisdiction. The finding of the body now gives jurisdiction which was not so at common law. The body was found in the Medway where the Admiralty has exclusive jurisdiction, and the right of the Admiralty coroner attached as soon as the body was found. [*Coleridge*, J. The proviso in the late statute seems to leave the jurisdiction of the Admiralty as it existed at common law.]

Lord *Denman*, *C. J.* I think the words of the statute are free from doubt, and that this inquest was properly held.

Coleridge, *Wightman*, and *Erle*, JJ., concurred.

Rule discharged.

Queen's Bench Practice Court.

Grandin v. *Maddons*. Michaelmas Term, Nov. 22 and 25, 1848.

JUDGMENT.—APPEARANCE.—IRREGULARITY.

Where judgment was entered on a judge's order to confess judgment without an appearance having been first entered for the defendant, the Court held, that it was an irregularity merely and not a nullity, and that this irregularity was waived by the defendant's attorney having attended the taxation of costs and asked for time to pay the debt and costs; the bill of costs not containing any item for entering an appearance, being a sufficient notice that no appearance had been entered.

THIS was a rule calling on the plaintiff to how cause why the judgment signed in this cause should not be set aside, and why a certain order of Mr. Baron *Alderson*, dismissing a summons to set aside the judgment, should not be rescinded. It appeared by the affidavits that the facts of the case were, that the defendant gave a judge's order for the payment of debt and costs in this action; judgment was signed thereon on the 12th of August, 1848. On the 14th, notice of taxation was given, which was attended by the defendant's attorney on the 15th, when he asked the plaintiff's attorney to give the defendant time to pay the debt and costs, which he agreed to do. In the bill of costs produced before the Master, there was no entry of any charge for entering an appearance for the defendant; on a search being made, it was discovered that no appearance had been entered. Upon this, on the 17th, a summons was taken out at chambers, calling on the plaintiff to show cause why the judgment should not be set aside as irregular, for having been signed without any appearance having been entered for the defendant. This summons was heard before Mr. Baron *Alderson*, on the 18th, when it was dismissed. On the 19th a second summons was taken out for the same purpose, which was also dismissed on the 20th. On the 6th of November, the present rule was obtained.

Wood showed cause, and contended, as a preliminary objection, that the rule must be discharged, on the ground that the defendant had precluded himself from coming to this Court to review the decision of Mr. Baron *Alderson*, by going a second time before him. This had put him in the power of the Court, and brought the case within the authority of *Thompson* v. *Becke*, 4 Q. B. 759; he also cited *Tadman* v. *Wood*, 4 A. & E. 1011; *Lane* v. *Newman*, 1 Bail Court, Rep. 93.

Pearson, contrà, contended, that *Thompson* v. *Becke* was much shaken by the case of *Re Stretton*, 14 M. & W. 806. The principle upon which *Thompson* v. *Becke* was decided was, that there the parties had consented to put the judge in the place of the Court, and abide by his decision, which was not the case here.

Patteson, J. I will consider this point, for if it be decided in favour of the plaintiff, it will not be necessary to go into the other question.

Cur. adv. vult.

On a subsequent day (Nov. 25) Mr. Justice *Patteson* said, that the facts of the case were not precisely the same as those of *Thompson* v. *Becke*, and that as he had some doubt as to the propriety of the decision of that case, he would hear the present case on the merits.

Wood showed cause. The decision of Mr. Baron *Alderson* in this case was, that the application to set aside the judgment was too late. This was a question entirely for him, and the Court will not review his decision, *Lane* v. *Newman*, 1 Bail Court Rep. 93. Then with regard to the judgment being signed without an appearance being first entered, it is a mere irregularity, and has been waived by the defendant asking time to pay the debt and costs, when he had full notice of the irregularity by there being no note of any charge for entering an appearance on the bill of costs. *Hawkins* v.

[a] 5 Q. B. 944.

Hassell, 12 M. & W. 776; *Williams* v. *Strachan*, 1 N. R. 309.

Pearson, in support of the rule. The judgment being signed without any appearance being entered, is not merely an irregularity but is a nullity, and cannot be waived, *Roberts* v. *Shaw*, 3 Dowl. 551; and attending to tax costs is no waiver of any irregularity in obtaining the judgment, *Archer* v. *Gerrard*, 6 Dowl. 132: no doubt, *Hawkins* v. *Hassell* is at variance with *Roberts* v. *Shaw*, but may be distinguishable from either that case or the present; he also cited *Stephens* v. *Lowndes*, 3 Dowl. & L. 295, and *Richardson* v. *Daly*, 4 M. & W. 384.

Patteson, J. In the case of *Roberts* v. *Shaw*, it certainly was held, that signing judgment without first entering an appearance, was a nullity; that is a very strong authority for the defendant, but then comes the later case of *Hawkins* v. *Hassell*, which is a very similar case to the present, there the parties had been before a judge and had consented to an order for payment of debt and costs, and in that case it was held, that the defect of not entering an appearance was only an irregularity and not a nullity. I think I am bound by that case, and must hold this to be an irregularity merely.

How has the irregularity been waived? as to that, *Hawkins* v. *Hassell* is also a distinct authority, and so I must be bound by it. With regard to the case of *Archer* v. *Gerrard*, which was cited by Mr. Pearson, that is no authority in this case, as there the objection relied on was a nullity and not an irregularity; it was impossible that such a judgment as in that case could stand. I think, therefore, that if this is to be treated as an irregularity, it must be taken to be waived by the defendant's attorney attending the taxation and asking for time, when the attorney had distinct notice of the irregularity, by the omission of any charge for entering the appearance. Time, it appears, was given, and the execution stayed. I think, therefore, that the irregularity was waived, and therefore this rule must be discharged with costs; but I decide this case quite irrespective of the case of *Thompson* v. *Becke*, which I rather think cannot be supported to its full extent.

Rule discharged with costs.

Common Pleas.

Ritchie v. *Smith*. Michaelmas Term, 1848.

RETAIL LICENCE UNDER 9 GEO. 4, CAP. 61.—ILLEGAL AND VOID AGREEMENT.

An agreement under which a party enters into certain premises, and to the plaintiff's knowledge carries on the sale of exciseable liquors without having first obtained a magistrate's licence in his own name, under the statute 9 Geo. 4, *cap.* 61, *is illegal and void, as between the immediate parties to it, being in contravention of an act passed for the protection of public morals and police, and no action therefore can be maintained against a person who is a surety for the due performance of such an agreement.*

ASSUMPSIT for the breach of an agreement by one Newman, for whom the defendant was surety. The material plea of the defendant alleged that the agreement was illegal and void, being made expressly to enable Newman to sell exciseable liquors by retail, without his having been duly licensed, contrary to the statute in such case made and provided. At the trial before Mr. Justice Williams at the last Middlesex Sessions, it appeared that Newman became a tenant to the plaintiff of the tap-room of Fendall's Hotel, under an agreement made between the plaintiff, the defendant, and Newman, which stipulated the payment of a rent of 4*l.* a week, and that Newman was to take all the malt he might require from the Mortlake Brewery, and to pay for the same every fourteenth day, and for the due fulfilment of those terms by Newman, the defendant agreed thereby to become surety to the extent of 200*l.* When the agreement was entered into, the plaintiff had a license in his own name, in the carrying on of the tap in question, and Newman entered and continued the retail business on his own account, with no other license. The tap was made quite distinct from the hotel, but it was proved that wine and spirits had been delivered into the stock of Newman under excise permits made out in the name of the plaintiff, and there was no doubt upon the evidence that *after* the agreement had been acted upon, both the plaintiff and Newman knew that they were acting contrary to the excise laws. The amount of the claim in the action was 102*l.*, arrears of the weekly rent, and 31*l.*, odd, the balance left due for malt supplied to Newman. A verdict had been found for the defendant, upon the plea of illegality.

Bovill, for the plaintiff, now moved for a rule calling upon the defendant to show cause why that verdict should not be set aside, and a verdict entered for the plaintiff for the amount claimed, or for a new trial, or why judgment *non obstante veredicto* should not be entered, upon the grounds, first, that there was no evidence of any concert between the parties at the time of entering into the contract, as was alleged in the plea; and, secondly, that the agreement was not an illegal one within the provisions of the 9 Geo. 4, cap. 61, sec. 81, providing in effect that the selling or permitting to be sold exciseable liquors by retail to be drunk or consumed upon the premises, without the persons so selling, &c., being duly licensed so to do, should render such persons liable for every offence to a penalty of any sum not exceeding 20*l.* nor less than 5*l.*, together with the costs of the conviction.

Wilde, C. J. It seems to me the present application ought not to be granted. The first part of the motion was for a new trial on the ground that the evidence did not warrant the verdict upon the issue joined on the plea which alleges in effect that the agreement had been made for the express purpose, object, and intent of enabling Newman to have

possession of the premises that he might sell therein for his own use by retail divers excisable liquors without being duly licensed, contrary to the statute in that case made and provided. Now the first piece of evidence was the agreement, and the question was whether or not, coupling that with the other evidence in the cause, there appeared enough to warrant the finding that the agreement had been made with the intention of enabling Newman to sell without a license; and it appears to me the jury could have come to no other conclusion than they had done, and therefore upon that ground, the rule ought not to go. Then as to the other point, namely, that the matter of the plea stating that the agreement had been made for the express purpose, object, and intent, as the plaintiff well knew, of enabling Newman to use the premises in the manner referred to, did not disclose sufficient to make the contract illegal. It was well known that two licenses are requisite for the retail of excisable liquors, the one from the Excise and the other from a magistrate. The latter does not appear to be connected at all with matters of revenue, but to be required solely upon the ground of public morals and safety, to protect the public from the carrying on by improper persons of a business which brought them in connexion with a class of society apt to give way to excess, and which therefore might lead to great public inconvenience. Such license is not granted without first ascertaining that the place in a public point of view is a convenient one, and secondly and specially, that the person licensed is a person of good fame and character, and one affording reasonable security for the conduct of his business in a manner consistent with public morals and safety. I know of no license more intimately connected with public morals than that is; and as the plea alleges, that the object of the agreement in question was to enable Newman to avoid the law by carrying on his business in the premises let to him by the plaintiff without the license thus required by law, the contract must be considered illegal and this conclusion is not contrary to any of the authorities cited. A plaintiff has no *locus standi* in a court of law to recover a demand which is the consideration for the assistance rendered by him in enabling a person to break a law made for the protection of public morals and safety, and it would be hardly possible to conceive any one more instrumental than the present plaintiff in assisting in that which must be considered an offence. On the whole, therefore, there was no ground for the rule.

Coltman, J., concurred.

Maule, J. I also think the rule ought to be refused. The agreement was made in order to enable a third party to avoid a law framed with a view to public morals and police, and there could be no doubt that an agreement of such a nature, although it only gave the power to do the illegal act, and did not expressly say that it "shall" be done, is a void agreement. It has been said that there is no case to be found in point, but I think all the cases which decide that agreements made in contravention of public policy shall be void, are strong authorities. If an agreement be made between two persons to do something necessarily contravening the excise laws, it cannot be doubted but that such agreement would be illegal and void. That question, however, did not arise here, and it was sufficient to say, for the reasons already given, that the agreement here was void, under the provisions of the statute before referred to, which related to the obtaining of a license from a magistrate.

Williams, J., concurred.

Rule refused.

BUSINESS OF THE COURTS.

COMMON LAW SITTINGS.

Queen's Bench.

The Court will take the Special Paper on Tuesday the 16th, and Friday the 19th days of January, in Hilary Term next, and on no other days during the term.

The New Trial Paper will be taken on Tuesday the 23rd, and Friday the 26th days of January next, instead of the Special Paper.

In and after Hilary Term, 1840.

MIDDLESEX.

In Term.

Sitting, Thursday . . . . . Jan. 11
And two following days at 11 o'clock.

2nd Sitting, Monday . . . . . Jan. 25
And subsequent days at Eleven o'clock.

3rd Sitting, Monday . . . . . Jan. 29
At ½ past Nine o'clock precisely, for Undefended Causes only.

A list of Causes will be printed immediately, but on the uncontradicted statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, and a small number of completed and new causes will be put into the list, day by day, in their usual order.

Sitting after Term, Thursday . . . . . Feb. 1
At half-past 9 o'clock.

LONDON.

In Term.

Sitting at 10 o'clock, Tuesday . . . . . Jan. 30

For Undefended Causes and such Causes as are tried in Middlesex after Term, with judgment of the Term.

After Term.

Friday . . . . . Feb. 7
(To adjourn to Monday, Feb. 10th)

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JANUARY 6, 1849.

"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

STATE OF THE PROFESSION.

ITS SUPPOSED "PROSTRATION."

OUR readers will recollect that we have of late frequently noticed the circumstances connected with the controversy, (somewhat warmly carried on,) between a few members of the Junior Bar and several Attorneys and Solicitors in the country, regarding the right of the latter to advocate the cases of their clients in the Inferior Courts and before the smaller Sessions of Magistrates. This is a question almost exclusively affecting the practitioners in the country. In the Superior Courts at Westminster, whether of Law or Equity,—in the Nisi Prius Courts of London and Middlesex,—in the Central Criminal Court,—and in the various Metropolitan Quarter Sessions, no attorney or solicitor has, time out of mind, proposed to play the part of an advocate. In all these Courts there is a competent Bar, in number, ability, and experience. Where such is the case, it is both the interest and the inclination of attorneys and solicitors to prepare briefs and engage counsel. The importance of the case, and the rank of the tribunal, generally render it their duty to secure the aid of the best advocate that can be procured. It is needless now to moot the ancient rights of attorneys, whether at the "Side Bar," or otherwise, in Westminster Hall, though much might be said upon the subject.

The interests, however, as well of the public, as of the practitioners both in town and country, are peculiarly affected by recent questions raised relative to the right of advocacy in the Bankruptcy Courts, the County Courts, and the Barristers' Revising Courts. Independently of ancient usage in other cases, and the Common Law right of the suitor to appear by his attorney, the statutes, establishing these Courts, confer a right upon attorneys and solicitors to act as advocates, though in some instances "the leave of the judge" is improperly required, as well for the barrister as the attorney. Referring to our recent observations on these topics, and on which we shall hereafter have much to enlarge,—as well for public as for professional advantage,—we have just been attracted by an article in a contemporary journal, on the state of the profession on this subject, which we must not pass unnoticed.

At the commencement of a new year we were inclined to look forward to "better times" for the profession,—to hope that the worst had passed away, and that the changes in the law and practice which had hitherto so seriously affected the interests both of the Bar and the attorneys, would hereafter be turned to some good account;—but, alas! we are doomed to disappointment. We have, it seems, laboured in vain. All the good that we have been endeavouring to effect, during the various projects of Law Reform,—denouncing rash and speculative changes, urging previous inquiry, interposing objections, and suggesting modifications,—all our warnings and exhortations are now set at naught, and we are charged with aiding in,—if not absolutely causing,—

"THE PROSTRATION OF THE PROFESSION."

A limited amount of *waggery* is sometimes permitted to intrude itself at this season, into publications which, (though it may be with very questionable success,) ordinarily assume a serious character; and, were it not for the unvarying gravity with which our contemporary has thought fit to allude to us, throughout an article under this ominous head, occupying three heavy columns, we might have inferred that the irrepressible spirit of jocularity suggested the remarks of which the *Legal Observer* is the subject. We are charged with having lapsed "into the democratic dogmas of the day, whose aim it is to abolish all social distinctions, and, as the first and surest step to this end, to overthrow the boundaries which custom and the law have combined to set between professions and the general public, and between different classes of the same profession;" and, with equal sagacity and generosity, are advised, that those "democratical principles, however adapted for a general newspaper, are ill suited to a legal journal, whose tendencies should necessarily be conservative, or they will be destructive." It is scarcely necessary to observe, that these accusations have as little applicability to, or foundation in, anything which ever appeared in this journal, as if we had been charged with co-operating with the chartists in firing the metropolis, on the 10th April, or heading the red republicans of the Faubourg St. Antoine, in June last. Our contemporary has devised this subtle and mystical mode of marking his disapproval of the course we have taken in reference to a matter, which it will require all his ingenuity to convince ordinary minds has any very clear connection with either the "democratic," or the oligarchical "principle."

The facts which are supposed to have called for the enunciation of those profound truisms, are simply as follow:—About six months since, some half-a-dozen junior barristers, whose names were conspicuously advertised by our contemporary,—albeit, until that event they were somewhat "unknown to fame,"—thought fit, for the first time, to announce their intention of attending certain Borough Sessions in remote parts of Devonshire, and claiming exclusive audience. The resident attorneys had necessarily, in the absence of a Bar, at all times discharged the duties of advocates in the Courts held under those limited jurisdictions, with the sanction of the presiding magistrates, and to the entire satisfaction of the suitors. The effect of the new *movement* on the part of the aspiring juniors, however, was, of course, to deprive the local practitioners of the position and emoluments they had hitherto enjoyed, and for which they had been, in many cases, at some pains and expense to prepare themselves. We concurred with the great majority of the profession, in considering this invasion of a field of practice fully and adequately occupied, as ungracious and uncalled for on the part of the gentlemen already alluded to, and we adhere to that opinion, though its expression should cause our contemporary to denounce us as a *sans-culotte*. Again, a member of the Bar took occasion, in an article on "the Province of the Bar," which appeared in the last number of the Law Review, for the first time, to question the right of solicitors to act as advocates in any case, and particularly in the Courts of Bankruptcy. We ventured to doubt the accuracy of the learned writer's conclusions, and endeavoured to show, with what success our readers will judge, that, in the particular instance specified, the inference to which he came was not borne out by the letter, and was clearly inimical to the spirit, of the acts of parliament bearing on the question.

Neither on these, nor on other occasions, have we advocated any interference with the legitimate province of the Bar. Satisfied with that branch of the profession we originally selected, we have no desire to infringe upon the rights of any other branch, but inclination, no less than duty, induces us to resist aggressive encroachment upon what we venture to consider, without any sense of humility, our "Order." Let us add, that although we are aware a few members of the Bar, whose capacity for business has been rarely if ever tested, have lent themselves to some petty speculations, directed against the other branch of the profession, the Bar generally, as a body, we are convinced, have no sympathy with this movement, and will be the foremost, whenever the opportunity arises, to repudiate the injudicious advocacy which, assuming to uphold, really degrades its character.

[We expect that the Quarterly Law Periodicals will take a different view of this subject, and we shall look with some interest for their next respective numbers.]

PRACTICE OF RETAINERS.

PROCEEDINGS OF THE INCORPORATED LAW SOCIETY.

THE Rules of Practice relating to Retainers of Counsel, which have been collected by the Incorporated Law Society, and in some respects amended, have been unfavourably noticed by a Correspondent of *The Times*, and in a leading article in *The Jurist*. Both parties have evidently bestowed censure without sufficient knowledge or due inquiry. They imagine that the Rules are made by the Law Society without authority, and complain of them as unjust.

It will first be proper to state briefly how these Rules came under the consideration of a General Meeting of the Incorporated Law Society, held on the 29th of November last.

It is well known that the Practice relating to Retainers was, in many important respects, doubtful and unsettled, disputes were frequently arising, not only to the annoyance of both branches of the profession, but to the injury of the suitors. It was clearly desirable to collect together the Rules, so far as they could be ascertained, and where they were deficient, to alter or extend them. We have on several occasions stated the course pursued by the Society to collect the fullest information on the subject. They issued a circular, containing a series of questions, to all the attorneys and solicitors in London, and the Law Societies in the country, and from the materials collected in answer thereto the then *proposed* Rules, were prepared and submitted to the consideration of all the leading members of the Bar. This took place in the month of May, 1847, and the application was repeated in the month of July of that year. Several suggestions and observations were received in reply to these communications, and were carefully considered. In the following November, the subject was again brought to the notice of the head of the Bar, urging the favour of a communication of the sentiments of the Bar. It should also be mentioned, that besides sending the proposed Rules *twice* to every Queen's Counsel and Serjeant, copies of them were laid before the Society of Judges and Serjeants, and the Benchers of all the Inns of Court.

After waiting during Hilary Term and vacation, the Rules as revised according to the suggestions of two eminent members of the Bar, were again circulated amongst the attorneys and solicitors both in town and country, and in the last long vacation were further considered by the Council of the Law Society; a general meeting was then convened for the 29th November last, at which these Rules were unanimously adopted, and the Council of the Society requested to take such measures as they deemed requisite to procure assents to the Rules.

They have been delivered, we understand, not only to all the leading but to every practising member of the Bar, accompanied by the Report of the Council, detailing the steps they had taken in collecting the information, and endeavouring to obtain the concurrence of the Bar.

Such is the state of the case at the present time, and we trust, on a careful consideration of the effect of the Rules, it will be found that they are (in the language of the Law Society) "fair and equitable, and calculated to promote the important objects of reducing to certainty the variable usage relating to Retainers by the establishment of intelligible rules, whereby the interest of the suitor and the convenience of both branches of the profession may be consulted and secured."

After the promulgation of the Rules, we looked with some curiosity for the opinions of such of the Law Periodicals as are conducted by members of the Bar. The quarterly works will of course not appear till the beginning of February. One of our weekly contemporaries, "*The Law Times*,"—usually very ready to censure both the commissions and omissions of the Law Society,—bestows its most unqualified praise, and hails this as an instance of the power and utility of the Society. *The Jurist*, however, thus commences its leading article on the subject:—

"The Incorporated Law Society has put forth a sort of manifesto, printed in another part of this number, under the title of 'Rules of Practice relating to the Retainers of Counsel,' adopted by a special general meeting of that Society. We suppose their next performance will be, *rules relating to the manner in which Counsel shall dress, or the style in which their chambers shall be kept*; for the Incorporated Law Society can have just about the same authority in the one matter as the other."

"We do not, *entirely*, object to have the rules of practice as to retainers settled; *it would be very convenient that they should be so*; but, we apprehend, it would be more consistent with a due regard to the rights and powers of the Bar, *if the Incorporated Law Society had inquired what are the rules of practice adopted and recognised by the Bar* as to Retainers, and suggested objections, if objections fairly occurred, instead of laying down what rules shall in future *govern the Bar*."

This is evidently written in very bad taste and spirit, for surely there is a palpable difference between regulating the wigs and gowns of barristers and the payment of fees made by the attorneys *on behalf of their clients;* and before this censure of unjustifiable interference had been thrown on the Law Society, it would have been as well if the editor had informed himself of the various communications of the Society when the Rules were first proposed and submitted to the Benchers, both in their collective and individual character.

We feel assured that the correspondence which has taken place between the Council of the Incorporated Law Society and the leaders of the Bar, will show that every due respect was paid, on the part of the attorneys and solicitors, to the members of the Bar, and that there is no ground whatever for charging the Law Society with assuming any improper interference in settling the rules in question. They were repeatedly submitted to the Bar, as we have above shown, and remained under their consideration for a year and a-half. The writer in *The Jurist*, notwithstanding the above tirade, subsequently says, "The rules proposed by the Incorporated Law Society appear to us *in the main rational and fit to be adopted* by the Bar."

He says, however, that some are not consistent with existing practice, and some are altogether vicious in principle. We shall take an early opportunity of pointing out such of them as are new, with the reasons in favour of the alteration; and, for the present, may say that *The Jurist* is quite mistaken in supposing that no notice is given, according to the present practice, before accepting a brief against a party who has given a general retainer. Why! the very object of the general retainer is, that the counsel should be engaged in all cases for the client, and how can the client know of the proffered adverse retainer or brief, unless he has notice of it? But of this more hereafter.

NOTICES OF NEW BOOKS.

The Joint-Stock Companies Winding-up Act, 1848, (11 & 12 *Vict. cap.* 45,) *with an Introduction, Notes, and Forms, and some Notes of Cases.* By JOHN MALCOLM LUDLOW, of Lincoln's Inn, Esq., Barrister-at-Law. London: Stevens & Norton. 1849. Pp. 221; lxxxii.

THIS is a very useful edition of this important Act. The 1st Part comprises an elaborate Introduction, to which we shall presently advert; the 2nd Part contains the Act verbatim; and the 3rd is occupied by the various Forms for carrying the Act into effect. The notes and annotations are especially valuable, and come with peculiar weight from the author, who was engaged in preparing the Bill on which the Act is founded. The sketch of proceedings in the Master's Office in execution of the powers of the Act, will also materially assist the practitioner.

In the Introduction, which occupies nearly one hundred pages, Mr. Ludlow has ably described the necessity for the Act and the grounds upon which it was founded. The following is an analysis of the 1st chapter:—

"Object of the Act.—Its Operation will be chiefly confined to Companies with unlimited Liability.—Necessity of it, especially in the Case of such Joint-stock Companies.—Rule of Equity, requiring all Partners to be Parties to Dissolution Suit, *Van Sandau* v. *Moore*, and other Cases.—Intimations of opinion from some Judges against the maintenance of the Rule.—Questions of Dissolution and Winding-up overlooked in a great measure in the Joint-stock Companies Registration Act of 1844.—Winding-up Provisions imperfect in Mr. Holroyd's Winding-up Act.—Lord Dalhousie's Act of 1846, besides its limited scope, is nothing but a Dissolution Clause.—Messrs. Field and Rigge's Letter to Mr. Ker, on which the Act is founded.—Means taken by the Act, Court's Jurisdiction on Petition; Master's Orders valid without Confirmation, and enforceable as Orders of Court; Official Manager."

The next chapter comprises a review of the Act, with reference to the mode of carrying it into effect, and to the need of further equity reform. The scope of Mr. Ludlow's opinions may be collected from the following summary:—

"The Act simply a New Chapter of Equity Procedure.—Why is Equity Procedure to be enacted by Parliament?—Special unfitness of Parliament for the Work.—But if the Principle of the Act be good, why is it restricted to Joint-stock Companies?—It is either a dangerous Innovation, or it calls for further Reform, and for a Code of Equity Procedure.—List of questions raised by it with reference to further Reform.—Penning of the Act.—Objections to the detailed Method of Drawing.—Letter from Mr. H. B. Ker.—History of the Act.—The Act a fair Specimen of the present System of Legislation.—Much of the Act unnecessary.—The Principle of the Act should have been enacted, and the Working of it left to the Judge.—Evils of the present System."

We shall have hereafter to advert to the

suggested further reforms in equity, to which the public attention has been recently called. The working of the present Act will show the capabilities of the Masters in Chancery to deal with matters in a more expeditious manner than they have heretofore been accustomed to, and by a different course of procedure from that now prevailing.

GRANDEUR OF THE LAW.

[A SERIES of Biographical Sketches of "The Legal Peers of England," upwards of eighty in number, appeared in the "Legal Observer" a few years ago, (vols. 23 and 24,) and which were afterwards republished by the author in a separate volume. That collection was confined almost entirely to the members of the Peerage, who, or whose ancestors, had occupied the judicial bench in England. We are now enabled to give an instance not only of noble, but of royal descent, in the family of an eminent and highly respectable solicitor, whose pedigree extends back to the seventh century.]

WRATISLAW OF RUGBY.

Bohemia originally comprised about nine hundred square miles of country, containing within it the sources of the Elbe, so long sought for by the Romans in vain, and the Eger till its junction with the Elbe. The name of Bohemia was given to this country by the Boii, who, under their leader Sigeves, fled there to avoid the Cimbrians. The Boii were driven away by the Marcomans, under their king Marbud, who wished to found a kingdom unknown to the Romans. Marbud increased his power to that degree as to draw upon his country the attention of the Romans, who sent an army under the command of the Goth Gothwald against him. Marbud was defeated and all his treasure seized in the thirty-seventh year after our Saviour. The Marcomans for more than two centuries waged war for the recovery of their country, but were finally vanquished and dispersed by the Romans under Diocletian in the year 299. The country was subsequently seized by the Langobards or Lombards, who, under Alboin, in 568, emigrated with the remnant of the Marcomans into Italy, and then the Thuringians took possession, but did not long hold it, as the *Sclavonians*, who, when driven out of Asia by the Huns, had settled between the Dniester, the Danube, and the Vistula, were in the year 596 disturbed by the mighty Avaren. They drew into Bohemia, where Avaren arranged with Dagobert, king of the Franks, to destroy them, but the Sclavonians, under a foreign warrior of the name of SAMO, defeated them with immense slaughter. The Sclavonians in gratitude elected Samo to be their duke, who forgot his obligations, and proved to them a bloody tyrant. Samo was the first Duke of Bohemia, and died in 658. The Sclavonians then determined to have a Sclavonian prince as their future ruler, and selected the munificent KROK, (the founder of the Wratislaw family,) to be their duke. Krok was born in 614, and proved himself one of the most enlightened men of his age. He founded the city of Krakau; he promoted agriculture, and established schools for the education of his people, and made such wise regulations as to acquire the surname of "the lawgiver." In all things he was well seconded by his wife Niva. He built at Buda, a few miles from the site of the present city of Prague, a school for the education of women, which he placed under her care, and at that school their three daughters were educated. The youngest daughter Libussa so distinguished herself by her talents and prudence, that on the death of her mother, she became his greatest joy and pride, and at his death in 697, he recommended her for his successor.

LIBUSSA accordingly succeeded her father in the dukedom, but certain parts of the territory were given to her two sisters. Thus began (in the provision for the other children) the division of the original country of Bohemia, which went on increasing, so that the head title for a time ceased to be Duke of Bohemia, and was Duke of Prague only. In 700 Libussa founded the city of Prague, and the family castle on the Wissehrad. Being urged by her subjects to marry, the number of aspirants for her hand were such, and their violence towards each other so great, that the duchess determined to have none of them; she artfully contrived to satisfy them, by ordering her favourite horse to be loosed, and agreeing that the person who should be nearest to the horse when it stopped should be her husband. The horse was accordingly loosed, and (as it had no doubt been trained) went direct to the Wladike Premysl, who was at plough, and stopped before him. Premysl accordingly became her husband, and a most excellent man and ruler he proved himself to be. Libussa died in 713, to the great grief of her subjects, leaving a son named Nezamysl. From Libussa the Wratislaw family descend in one unbroken chain of male descent.

After her death PREMYSL became duke, and dismissed (as useless) Libussa's body-guard, which was composed entirely of women; at this they were so offended as to determine to destroy Premysl, and all the men in Bohemia, beginning with their own lovers and husbands. They waged a most bloody seven years' war, but at last their leaders were destroyed in a well-planned ambuscade, and the remainder returned to their duties. Peace and its attendant agriculture, again spread in Bohemia, and Premysl much improved the minds of his subjects, as well as their conduct, by his excellent example. He died after a reign of twenty-two years, and was succeeded by NEZAMYSL, who founded the town of Beraun, and died after reigning thirty-nine years. His son MUATA succeeded him in 783. Muata was infatuated with the chase, and greatly neglected his ducal duties for it. He however in 195 founded what is now called the old part of the city of Prague, and caused the houses to

be built with stone; he also founded the town of Czeslau, and died in 804, leaving a son, WOGEN, as his successor. Duke Wogen enlarged and fortified Prague. It was well he did so, as great odds were brought to bear against him. He fought the Misonians and thoroughly beat them, also several battles with Charlemagne, to whom at last he consented to pay tribute. On Charlemagne's death in 815, Duke Wogen refused to continue it. Wogen reigned twenty-eight years, and died in 832, leaving two sons Winslaw and Wlastislaw.

WINSLAW succeeded to the dukedom, but gave to his brother the Saazer district. Duke Wlastislaw died before Winslaw, leaving a son Wlastislaw. Duke Winslaw only survived his brother a short time, dying in 835, leaving a son KRESOMYSL as his successor. Duke Kresomysl was one of the most passionate men that ever existed. He also neglected agriculture for mining, to that degree, that famine pervaded the land. He founded the town of Pribram, on account of the silver mines there. He was constantly in hot water with the Moravians. To him, however, the inhabitants of Prague are indebted for the charter enabling them to buy and sell houses and land subject to a small fixed tax. Kresomysl died in 852, when he was succeeded by his son NEKLAU, who was a very peaceful prince, for which he was so despised by his cousin Wlastislaw, that the latter endeavoured to dethrone him. After many battles Wlastislaw was defeated and killed. He left a son, whom Neklau took care of, and placed, as he conceived, in the best hands for his education, but his tutor, thinking to please Neklau, murdered the young prince, and brought his head to Neklau, who, for his barbarity, had him instantly hung upon an alder tree. Neklau thenceforth reigned in peace, and Bohemia flourished greatly. He added to the family castle on the Wissehrad, a lofty tower, in which he placed the portraits of his ancestors, and died, leaving two sons, HOSTOWIT and MYSTIBOG, whose dissensions about the division of the dukedom, were very injurious to the country, and the cause of many bloody battles, which only ceased at Mystibog's death in 890, leaving a son RADISLAW. Duke Hostowit soon followed his brother to the grave, and was succeeded by his son BORIWOY, who strove in every way to promote the welfare of his subjects. He went to the court of Swatopluk in Moravia on business, and there met the Apostles Methodius and Ciryllus, who converted him to Christianity. On his return to Prague, he strove to spread Christianity amongst his people, but they drove him from his throne, and he sought refuge at the court of Swatopluk; his cause however was strongly supported by Swalibor, the heathen prince of Melnick, and at length the Bohemians were induced to recall him. In return for this service, Boriwoy married Ludmilla, the daughter of Swalibor, who some years afterwards embraced Christianity, and was, together with her father and her children, baptized. Boriwoy and Ludmilla were thenceforth most zealous in spreading Christianity, and founded many churches. After doing much good to his country, Boriwoy resigned the government to his eldest son, SPITIGNEW, who soon relapsed into heathenism, and gave much trouble to his parents. He however died at the end of five years, when Boriwoy was entreated to retake the government, which he declined; and WRATISLAW, his second son, succeeded to the dukedom in 907. Wratislaw, upon the suggestion of his parents, married the beautiful and well-descended Drahomira of Saaz, upon her engaging to be instructed in and to adopt the Christian religion. This she put off from time to time, until she had a family of two sons and a daughter, and then she shewed herself to be so zealous a heathen, as to determine to root out Christianity from Bohemia, and to murder her husband. To prevent which Duke Wratislaw placed his eldest son WENZEL under the care of his parents, and took his other son under his own care, and banished Drahomira; but he could not prevent her from intriguing with the heathens in his dominions, and causing much trouble. Duke Wratislaw founded several churches, amongst others, that of St. George at Prague, where he desired to be buried; he also founded the town of Bunzlau, afterwards called Altbunzlau, and the beautiful church there. Duke Wratislaw died in 916, and was buried according to his desire in St. George's church, where his tomb is still in good preservation; at his death, his sons being minors and Boriwoy dead, he gave to his mother Ludmilla the government and the charge of his children, with a recommendation that they should divide the dukedom between them. Drahomira however usurped the government, and caused a frightful civil war, but not succeeding so well as she expected, she bribed two men to destroy Ludmilla at her own castle. In 918 her death took place accordingly. Five years afterwards her son Wenzel had her corpse removed to St. George's church, and placed near his father's, and her tomb is also in good preservation at this time. Upon the death of Ludmilla, Drahomira for four years ruled, and pursued the Christians with fire and sword to that degree, that Wenzel, although only eighteen, flung off his mother's yoke, and assumed his power as duke, and banished her to her widow's estate. He was afterwards unfortunately induced to recall her, and to give to his brother Boleslaw, who was under the control of his mother, the above town of Altbunzlau, and all the adjacent country on the banks of the Elbe. In 925 Duke Radislaw, son of Mystibog, increased his dominions so much, as to think himself able to drive Wenzel from the throne, and large armies were collected on each side, when Wenzel proposed that they should settle the matter by personal combat, and the conqueror should be sole sovereign in Bohemia, which Radislaw agreed to. They prepared themselves for the combat in the presence of both armies, and advanced with drawn swords against each

other, when Radislaw, as he stated, saw an angel hovering over Wenzel, who ordered him, "To commit no murder," whereupon Radislaw started back, as if struck blind, and then fell at Wenzel's feet, who raised him up, and they kissed each other, and became the greatest of friends. The fame of Wenzel as a Christian prince, was at this time so great, that the Emperor Otho sent to him "the arm of the holy Guy," and the body of the Burgundian king Sigismund, who was called "the conductor to God," and as arms a brown eagle on a white field, and conferred upon him the title of king, but Wenzel was never enthroned. Wenzel built a church called Guy's church in 933, to receive these holy relics. He also founded the first Orphan Asylum at Prague, and made it free for all children, whether Christian or heathen. Wenzel was stopped in his further good designs, by his brother Boleslaw, whose ambition knew no bounds; and being instigated by his mother Drahomira to get rid of his peaceful and pious brother, he, for this purpose, invited him to a feast at his castle at Bunzlau, given in honour of his son, which Wenzel attended, and when he went, according to his custom, to pray in the church, Boleslaw shut him in, and had him attacked by assassins, concealed for the purpose, who killed him whilst he had the ring of the door in his hand, endeavouring to open it. His death took place in 936. He is reverenced in Bohemia as a patron saint, and hundreds of people to this day visit his chapel in the cathedral of Prague, to kiss the ring of the chapel door, stated to be the actual ring held by Wenzel when he was killed.

Boleslaw succeeded his brother, and resumed the title of Duke of Bohemia, and made his subjects renounce Christianity. He waged a fourteen years' war against the empire, and died in 967, leaving a son and daughter. His son, Boleslaw the Second, married Emma of Bavaria; his daughter married Miseco of Poland, and had issue, two sons. Boleslaw the Second died in 999, leaving three sons. Upon his death a contest took place between these sons, and the sons of the daughter, for the dukedom. Bolsslaw's eldest son, *Boleslaw the Third*, held it three years, when he made way for *Wladiwoy*, the eldest son of the daughter, who, at the end of the year was obliged to yield to his brother *Boleslaw Crobry*, who at the end of another year gave way to *Jaromir*, the second son of Boleslaw the Second. He held it eight years, when he yielded it up to his younger brother Udalrich, who kept it till his death in 1037. He was succeeded by his son Bretislaw the First, who enlarged his dominions and reigned till his death in 1055, leaving four sons, Spitignew, Wratislaw, Conrad, and Otto. The latter died in 1086, leaving one son, Swatopluk.

Spitignew (called the Second) succeeded his father, and reigned six years. On his death his brother Wratislaw the Second (surnamed Justus) succeeded him, but in very troublesome times. He was however equal to the task imposed upon him, and governed his dukedom most gloriously and prudently, and largely increased his dominions. He supported the Emperor Henry the Fourth; he also promoted the Christian religion to that degree, that Pope Alexander the Second sent to him a golden rose as a mark of his regard. In 1075 he took from the hands of Rudolph, Count of Suabia, his battle spear, and showed in all actions so much valour and prudence, that the Emperor n 1086, at the diet of Mayence, gave to him, with the consent of all the princes of the empire, a golden crown and the next rank to himself in the empire for his life. Soon afterwards the emperor also gave to him the Markgravat of Moravia and the Dukedom of Silesia, as well as the tribute paid by the Polonians to him as Emperor of Germany. King Wratislaw in his province of Silesia founded the city of Breslau; he also founded the cathedral at Prague, carrying himself the first dozen baskets of stone; he also put to flight the Count of Austria, and conquered those parts of Moravia which were not subject to the emperor. King Wratislaw was very fond of the chase, and was killed by a fall from his horse, whilst hunting, in 1092, after a reign of thirty-four years. King Wratislaw was thrice married. By his first wife Arbona he had no issue. By his second wife Adelheid, daughter of Andreas the First, King of Hungary, he had one son, Duke Bretislaw the Second, (from whom the Rugby family descend,) and one daughter Judith, who married Wladislaw, Duke of Poland. By his third wife Swatowa, daughter of Cassimir, the first king of Poland, he left three sons, Boriwoy, Wladislaw, aud Sobieslaw.

[*To be concluded in our next Number*].

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Whittle v. *Henning*. April 14, and Dec. 21, 1848.

ALIENATION OF MARRIED WOMAN'S REVERSIONARY LIFE INTEREST.

The reversionary life interest of a married woman in a fund in Court is inalienable during her coverture; and the Court will not give effect to any assignment or machinery whereby such life interest is attempted to be merged in the reversion.

This was an appeal from the decision of the Master of the Rolls, in a cause-petition, under the following circumstances:—By an order in the cause, the amount of a legacy of 2,000*l*.,

which had been settled on the marriage of Mr. and Mrs. Henning, was invested in 3*l.* per cent. consols, and placed to the account of the trustees of the marriage settlement. The legacy had been bequeathed to Mrs. Henning by her father, and the trusts of the settlement, so far as material to the present question, were to pay the interest to the husband for life, afterwards to the wife for life, and upon the death of the survivor, to pay the principal to such one or more, exclusively of the others, of the children of the marriage, as the husband and wife should jointly appoint. By indenture, dated Nov. 1, 1847, this power of appointment was expressed to be irrevocably exercised in favour of an only child, a son, and who had then attained 21 years of age, and the trustees were thereby directed to stand possessed of the principal and interest, &c., after the death of the survivor of the husband and wife, in trust for the absolute benefit of their said son. On January 13, 1848, the husband, wife, and son presented a petition to the Court for an order to transfer into the son's name the sum of stock in which the legacy had been invested. The Master of the Rolls took time to consider his judgment, and, on Feb. 8th, refused to grant the prayer of the petition. The husband and son subsequently assigned to the wife their respective interests in the fund. The petition was then amended, and again (March 23) mentioned to the Court; but his lordship still refused to make the order, and dismissed the petition.

Mr. *Batten* said, that the decision of the Master of the Rolls on this point was conflicting with that of the Vice-Chancellor of England. The question was whether the reversionary life interest of a married woman in a fund in Court could be reduced into possession and disposed of, under the circumstances above stated. Upon the authority of *Doswell* v. *Earle*, 12 Ves. 473, (decided by Sir William Grant,) the present Vice-Chancellor of England had made a similar order to that now required. His lordship (the Chancellor) had also made such an order in *Lackton* v. *Adams*, 5 Law Journ. N. S. Chan. 328; *Latchom* v. *Vincent*, S. C. Reg. Lib. 1835, B., fol. 941; and see note to present case, 17 Law Journ. p. 153. [*Lord Chancellor*. That was an order by consent; it was no decision of mine.] In *Richards* v. *Chambers*, and *Veaman* v. *Duill*, 10 Ves. 580, Sir William Grant says quite the contrary to the report of his judgment in *Doswell* v. *Earle*, supra; but the Vice-Chancellor of England has acted upon the latter in several recent cases. *Creed* v. *Perry*, 14 Sim. 592, and *Bean* v. *Sykes*, there cited, 2 Hayes' Conveyancing, (5th edn.) p. 640; *Wilson* v. *Oldham*, ibid., p. 594; *Hall* v. *Hugonin*, ibid., p. 595; and *Bishopp* v. *Colebrook*, 11 Jur. 793. In the present case Mrs. Henning's life interest might be said to be merged in the reversion. [*Lord Chancellor*. The doctrine of legal merger is not applicable to a case in which the interest is merely and entirely the creature of equity.] The case of *Doswell* v. *Earle* is cited by Mr. Jarman in Bythewood's Precedents, (3rd edn., vol. 6, p. 297,) and a form is there given for conveying such an interest as the present. That case and Mr. Jarman's opinion have been much acted upon in practice, and a large amount of property thereby involved. The Vice-Chancellor of England considers the doctrine in *Hall* v. *Hugonin* to be very convenient. There is no reported case of any decision on this point by either of the other Vice-Chancellors, and the difference between the opinion of his Honour and that of the Master of the Rolls, renders the present question one of great importance. [*Lord Chancellor*. You apply, I presume, on the consent of the wife. The question then is, whether the Court will take this consent when it will part with her reversionary interest.] There is a difference between her consenting to part with her right in equity to a settlement and her right of survivorship. It is clear that a married woman may part with her reversionary interest in lands. In the present case there is a power in the settlement for the trustees to invest the money in land. The learned counsel also cited *Pickard* v. *Roberts*, 3 Madd. 384; *Stiffe* v. *Everitt*, 1 Myl. & Cr. 37; *Box* v. *Box*, 2 Connor & Lawson, 605; *Purdew* v. *Jackson*, 1 Russ. 1; and *Story* v. *Tonge*, 7 Beav. 91.

Dec. 21.—The *Lord Chancellor* said, he had fully considered this important case, which involved the question of what amount of protection the Court would throw round a married woman. The point was worthy of the utmost consideration, and more so as the Vice-Chancellor of England and the Master of the Rolls had given conflicting decisions upon it. His lordship was now called upon to state what effect the machinery above described had had upon Mrs. Henning's reversionary life interest in the fund in question. It was contended that it had merged in the reversion. If such were the case at law, this Court would do all it could to prevent it; but if there were no legal merger, and in the present case his lordship thought that there was not, the Court would certainly not create an equitable merger. Ever since the time of Charles the 2nd, this Court had proceeded on the principle of protecting a wife's settled property, and it would not assist the husband to extend the interest which he took, *jure mariti*, in his wife's property. If the present plan were to be successful, it would put an end to all the care and forethought of fathers in securing life interests for their daughters in property settled on their marriage. With respect to the state of authorities on this question, it appeared that the Master of the Rolls had in the present case, and in another, (*Story* v. *Tonge*, supra,) refused to make an order to transfer the *corpus* of the settled property. The Vice-Chancellor of England had, on the contrary, made such an order in the cases collected in 14 Simons, and cited above. His lordship said, he approved of Sir Thomas Plummer's decision in *Purdew* v. *Jackson*, (supra,) and had arrived at the conclusion which was in accordance with the

opinion of Sir William Grant, in *Richards* v. *Chambers*, (suprà,) that the life interest of a wife was unattainable by her husband during the coverture. The present scheme, notwithstanding all the machinery which has been used, had entirely failed, and the wife's life interest remained intact. The decision of the Master of the Rolls must therefore be affirmed.

Rolls Court.

The Queen v. *Prosser*. Nov. 9 and 25, 1848.

RESCINDING LETTERS PATENT.

The Master of the Rolls has no power to interfere with the Attorney-General in granting a fiat for an action to try the validity of a patent.

On a motion to set aside a writ of *sci. fa.*, issued by Irving Van Wart, calling on the defendant to show cause why letters patent for certain improvements in manufacturing welded iron tubes, should not be rescinded,

The *Master of the Rolls* dismissed the application with costs, on the ground that he had no jurisdiction to interfere with the discretion of the Attorney-General, as to whether or not he would grant his fiat for the prosecution of the action.

The *Court* has the same jurisdiction over the Attorney-General as over other suitors, and would prevent any vexatious proceedings, but he was only liable, in the exercise of his discretion, to the superior advisers of the Crown.

Smith v. *Oliver*. Dec. 9, 1848.

WILL.—LAPSED LEGACY.

By the will in this case, the testator after giving various legacies directed as follows:—"All which legacies I direct shall be paid within six months after my decease, and in case it shall happen that any or either of the legatees shall die, not having received their respective legacies, and leaving any child or children, then I direct that such child or children shall have and be entitled to their parents' share, in equal proportions, to be payable to them at the age of 21, or their marriage, and the interest to be paid in the meantime for their maintenance." Three of these legatees died in the lifetime of the testator, leaving children.

The *Court* held, that the legacies to the three legatees who died in the lifetime of the testator had lapsed, and became part of the residue.

Kirkman v. *Booth*. 22nd Nov. 1848.

DECREE FOR AN ACCOUNT AFTER FORTY YEARS AGAINST THE REPRESENTATIVES OF EXECUTORS.

A bill prayed an account of the property of the testator, who died in September 1803, which the executors had, or might have, received but for wilful default. The will appointed certain persons his executors and trustees, and gave them his estates in trust for his wife for life, and after her decease to his son for life, and ultimately to such of the grand-children as the son should appoint. The executors were dead, and the defendants were their representatives.

Turner and *Baily* appeared for the plaintiffs; *Roupell* for the defendants.

The Master of the Rolls said that, as the will was obscure, he could not declare that the trustees and executors ought to have converted the personal estate into money within a year after the testator's decease. But the plaintiffs were entitled, notwithstanding the lapse of time, to have a reference to the Master to inquire into the estate of the testator,—what had become of it,—and whether any wilful default had been committed in realizing the estate.

Vice-Chancellor of England.

Fosbrook v. *Woodcock*. Nov. 10, 1848.

INJUNCTION.—WASTE.—STATUTE 4 ANNE, C. 16, S. 22.

Before a bill for an injunction to stay waste has been put upon the file, a subpœna will issue, and leave will be given to serve notice of motion for the injunction.

In this case the bill for an injunction to stay waste was prepared, but not filed, and the subpœna had issued.

Mr. *Shopter* asked for leave from the Court to serve notice of motion for an injunction for the following day, stating that the case of waste was particularly excepted out of the statute 4 Anne, c. 16, s. 22, which enacted, that no subpœna or other process for appearance should issue until the bill had been filed.

The *Vice-Chancellor* gave leave to serve the notice of motion.

Blagrove v. *Hancock*. Nov. 22, 1848.

DEVISE VOID FOR REMOTENESS.—UNBORN GRANDCHILDREN NOT TAKING TILL AGE OF 25.

A testator devised his freehold and copyhold estates to trustees, in trust to receive and apply the rents and profits for the benefit of his wife and any present and future grandchildren during her life; and after her death to convey and surrender the estates to such of his present and future grandchildren as should attain the age of 25, to hold the same as tenants in common.

The *Court* held that the gift to the grandchildren was void for remoteness, as some of the children might not attain 25 years within 21 years after her decease; and that to have entitled them to take they must have been born in the lifetime of the wife, or 21 years after.

Sharp v. *Frith*. Nov. 24, 1848.

BEQUEST TO EXECUTORS.

Testator gave by his will a sum of 60*l.* per annum to each of his executors, by way of acknowledgment for their services, to begin at his decease, and to continue so long as they

should respectively execute the trusts of the will. They were empowered to set apart and invest in their own names a sum sufficient to meet this annuity. The investment, when made, was declared as part of the residuary estate subject to the payment of the annuity or annuities, as the case might be.

Mr. *Bethell* appeared for the surviving executor.

Mr. *Willcock* for the residuary legatees.

The *Vice-Chancellor of England* held that, although all the trusts of the will had been performed, the annuity did not terminate, as it was granted by the testator to the executors so long as they remained executors.

Rawlings v. *M'Mahon.* Nov. 24, 1848.

COLONIAL LETTERS OF ADMINISTRATION, WHEN DEEMED SUFFICIENT.

The *Vice-Chancellor of England* held, that an administration taken out in Antigua was sufficient, under the following circumstances:—

A sum of 12,000*l.*, charged upon an estate, with the slaves thereon, in Antigua, was settled by Mr. W. W. Rawlins, under a marriage settlement, upon certain trusts for his ten children. One of them afterwards died above 21, and left to the plaintiffs as his administrators the vested interest in his share of the property, and letters of administration were granted to one of them. The money was not raised in the lifetime of the settlor, and a sum paid by the Slave Compensation Commissioners as compensation for the slaves on the estate was all that remained of the 12,000*l.* The plaintiffs desired to administer to their part of the money so paid.

Mr. *Bethell*, Mr. *J. Parker*, and Mr. *Bagshawe*, appeared for the different parties.

Vice-Chancellor Knight Bruce.

Wightman v. *Powell.* November 10, 1848.

PRO-CONFESSO.—AMENDMENT.

After an order to take a bill pro-confesso, *was made, an amendment of a clerical error was made by order, and the* pro confesso *order was held to be gone.*

The bill in this suit, which was for foreclosure, was taken *pro confesso* against some of the defendants. After this, on an error being discovered that the plaintiff's mortgage was dated 30th, instead of the 3rd of March 1832, an order was obtained to correct it under the 65th order of May, 1845.

His *Honour* considered that a difficulty existed. He was of opinion that when an order to make an amendment was obtained after an order to take the bill *pro confesso* that the latter order was gone. He entertained that opinion, although very unwillingly.

Mr. *Bazalgette* appeared for the plaintiffs.

Cridland v. *Lord de Mauley.* Nov. 11, 1848.

PRACTICE.—AMENDMENT OF BILL.

Amendments made under an order of the Court should be made within 14 *days after the order, pursuant to the* 34*th section of the* 16*th order of May* 1845, *unless the order specifies another time within which the amendments are to be made.*

In this case, the plaintiffs obtained an order from the Court in July last, for leave to amend their bill, but the order was not passed until 18 days after it was made. Upon the amendment being made, Mr. Walpole, on behalf of one of the defendants, moved, on the 3rd of November, that the amendments should be expunged on account of their not having been made within 14 days after the date of the order to amend, and cited the 34th section of the 16th Order and the 70th Order of May 1845, and the case of *Armistead* v. *Durlane*, before the Master of the Rolls, not yet reported.

Mr. *Forster*, for the plaintiffs, said that the Vice-Chancellor on the authority of that case had ordered the amendments to be expunged, but without costs: and he subsequently moved that the bill should be re-amended, or that the amendments already made should stand.

On this motion, and a rehearing of the former motion coming on for hearing together,

Mr. *Walpole*, Mr. *Terrell*, *and* Mr. *Hitchcock*, for the several defendants, contended that the plaintiffs ought to pay the costs of both motions.

Mr. *Forster*, for the plaintiffs, was not called on.

His *Honour* ordered the amendments should stand, and be made as from this day, and that the plaintiffs should have no costs on the first motion, but that the other costs should be costs in the cause.

Emuss v. *Smith.* Nov. 23, 1848.

CONSTRUCTION OF WILL BEFORE, AND OF A CODICIL AFTER, THE ACT.

A WILL executed before the passing of the Wills' Act (7 W. 4, and 1 Vict. c. 26), devised a certain estate called Nash's Farm, in strict settlement. The testator afterwards bought another estate, called William's Farm, and entered into a contract for the sale of the two farms. He also promised, that in the event of the purchaser not fulfilling his contract in his (the testator's) lifetime, the trustees should let him have the farms at a certain price. By the codicil, made after the Wills' Act, the testator devised William's Farm on the same trusts as he had devised the other estate by the will, without referring to the agreement. A decree for sale having been obtained, the purchase-money was paid into Court.

Sir *F. Simpkinson*, Mr. *Russell*, Mr. *Wigram*, Mr. *Swanston*, Mr. *Bacon*, Mr. *F. Bayley*, Mr. *Amphlett*, Mr. *Lonsdale*, Mr. *R. Palmer*, and Mr. *Lewin*, appeared for the respective parties.

The *Vice-Chancellor Knight Bruce* held, that the parties who were entitled to the estate under the will and codicil, if no purchase had been effected, were entitled to the proceeds of the sale of the two farms. And his Honour also

held, that the Wills' Act did not affect the doctrine laid down in *Mirehouse* v. *Scaife*, (2 Myl. & C. 695,) upon the construction of a will, but that both the debts and legacies were charged upon the real estate.

Vice-Chancellor Wigram.

House v. *Way*. Nov. 18, 1848.

LEGACY.—LONG ANNUITIES.

A legatee entitled to long annuities in specie, contrary to the ordinary rule for converting them into permanent securities.

In this case the question was, whether certain Long Annuities and other property of a terminable character, given by a testator to a tenant for life, with remainder to other parties, were to be converted into permanent securities and invested for the benefit of the parties entitled in succession, or whether the tenant for life was entitled to receive the income arising from them in specie.

The *Solicitor-General* and *C. J. Anstey*, for the tenant for life and executors of the testator; *Wood* and *Sandys* for plaintiffs.

The *Court* decided in favour of the legatee's enjoyment in specie, as the words of the testator clearly indicated an intention to that effect; and the case, therefore, was taken out of the ordinary rule requiring conversion into securities of a permanent nature.

Clementi v. *Fielding*. Nov. 24, 1848.

TRUST VOID UNDER THE LAW AGAINST PERPETUITIES.

CERTAIN monies were declared by a post-nuptial settlement to be, in the event of the settlor's decease, whether in the wife's lifetime or not, in trust for his then present or any future children, in equal shares, which should become vested in the sons, on their attaining the age of 24, or leaving issue, and in the daughters on their attaining that age, or on marriage with the consent of the settlor's wife.

The *Vice-Chancellor Wigram* held, that the provision was void for remoteness, as not vesting the property before the expiration of a life in being, and 21 years afterwards.

Impey v. *Impey*. Nov. 24, 1848.

PETITION OF ORPHAN ASYLUM FOR REIMBURSEMENT OUT OF INFANT'S PROPERTY SUBSEQUENTLY ACQUIRED.

In 1835, an officer in the East India Company's service died, having bequeathed his property to two illegitimate children, who, however, appearing to be destitute, were maintained by the Bengal Military Orphan Asylum. One of the children died soon after the executors came into possession of some property under the will of the testator's father, and the other in consequence became entitled to about 60*l.* a year. The agent of the Orphan School presented a petition for the allowance of the expenses, (amounting to 496*l.*), of the infant's maintenance, which they charged at 48*l.* per annum. The interest of the property had accumulate and amounted to 340*l.*

Mr. *Russell* for the petition; the *Solicitor-General* and Mr. *Fisher* against it.

The *Vice-Chancellor Wigram* held, that the orphan school was only entitled to the interest of the fund from the period, namely, in 1841, when the infant became entitled thereto; and that, therefore, the petition, as far as it prayed the allowance of the residue of the maintenance out of the corpus of the property, would be dismissed with costs.

Court of Queen's Bench.

(Before the Four Judges.)

The Queen v. *The Inhabitants of Christchurch*. Michaelmas Term, Nov. 25, 1848.

POOR.—9 & 10 VICT. C. 66, PROVISO RETROSPECTIVE.

The statute 9 *&* 10 *Vict. c.* 66, *s.* 1, *enacts that, from and after the passing of the act, no person shall be removed from a parish in which such person* shall have resided *for five years; and a proviso in the same section directs that the time during which such person* shall be *a prisoner shall be excluded from the computation of time.*

Held, *that the proviso had a retrospective effect; and that a pauper who had resided in a parish from* 1839 *till the making of the order in May,* 1847, *but from* 1843, *had been receiving relief, was removable.*

ON appeal against an order of two justices, dated 18th May, 1847, for the removal of M. Sweeney, widow, and her four children, from the parish of St. John to the parish of Christchurch, both in the county of Surrey, the Sessions confirmed the order, subject to a case.

The paupers were chargeable to the parish of St. John, and the settlement of all of them was in the parish of Christchurch. The pauper M. Sweeney had resided at No. 5, Sard's Rents, in the parish of St. John, continuously and without interruption, from the month of April, 1839, up to the said time of the trial of this appeal. She has been a widow since March, 1846. The order of removal was applied for and made the 18th of May, 1847. Her abovenamed four children have always resided with her. The pauper, M. Sweeney, received relief from the parish of St. John, from some time in the month of March, 1843, till some time in March in the same year. She then applied for and received relief from, and was maintained by and out of, the rates (not a *bond fide* charitable gift) raised in the said parish of Christchurch, and continued to receive such relief out of the rates of the parish of Christchurch from March, 1843, to September, 1846. Since that time to the hearing of the appeal, she had received relief from St. John's. The statute 9 & 10 Vict. c. 66, s. 1, enacts, that from and after the passing of the act, no person shall be removed from any parish in which such person

shall have resided for five years; provided always, that the time during which such person shall be a prisoner, &c., shall, for all purposes, be excluded in the computation of time hereinbefore-mentioned. The question submitted for the opinion of this Court is, whether the effect of that statute was to make the paupers, under the facts stated, irremovable from the parish of St. John.

Mr. Serjeant *Wallinger*, in support of the order of Sessions.

Mr. *Clark* and Mr. *Keane*, contrâ.

Cur. adv. vult.

Lord *Denman*, C. J., now delivered the judgment of the Court.[a] In this case the pauper had resided in the removing parish from 1839 until this order of removal was obtained in 1847, but had been receiving relief continuously from the appellant parish from 1843. If the time during which she was so receiving relief, before the passing of the 9 & 10 Vict. c. 66, was to be excluded from the computation of time of residence, she was removable. The question thus raised is, whether the proviso in the first section is retrospective as well as the enacting part. For the purpose of deciding between the two conflicting constructions, the effect of the enacting clause may be said to be, that no person who should have resided for five years next before the application for the warrant shall be removed. One mode of trying the effect of the excepting clause is, to take for example one instance, namely, that the time during which such person shall be a prisoner shall be excluded for all purposes in the computation of time before mentioned. As the enacting clause applies to every residence of five years before the application for the warrant, it may apply to a case where part of such time was before the passing of the act, (26th August, 1847,) and part subsequently, and when the person to whom the section applies was a prisoner during that part which was before the passing of the act, then the question arises, whether that excepting clause applies to that part of the five years which had passed before the statute was executed.

On the one side the application of the excepting clause to the time passed before the passing of the act is denied, because the future tense is used to express the time to which it is to apply, namely, "the time during which such person shall be a prisoner shall be excluded," and so it is said these words could not be made to apply to the past time; and a construction which requires a change of some of the words of the statute is to be avoided, and because the application of the clause to the time past would make the statute retrospective, and the general construction of the statutes is against such a construction; and the argument is said to be strengthened by the fact, that in the enacting clause the past future tense is used, "shall have resided," and therefore, the change to the tense in the following sentence indicates an intention to express a different time. On the other side, the application of the excepting clause to the time passed before the statute is affirmed from the structure of the two clauses, from the reason of the thing, and from the intention to be collected from the context. The structure of the two clauses was obviously for the purpose of defining cases where persons theretofore removable shall be irremovable, and that definition is effected by using words too wide; but the exceptive proviso reduces its enactments to the limits within which it was the intention of the legislature to confine them; and the form of the excepting clause appears to be to make it applicable to all the time to which the enacting clause applies, and assumes the five years required by such clause had been completed, and then the enacting clause would come into operation only in respect of such persons found to have resided for the required five years; and the mode in which it is denoted to operate, is by excluding the time they have been imprisoned from the computation directed to be made by the enacting part.

The process may be thus described:—When the five years are to be computed, the sessions must inquire whether the person whose claim of residence is to be computed had been under any disability during any part thereof; if not, then such person was irremovable; if he was, then the excepted period was to be omitted from the calculation, and an equal portion of preceding time brought into computation to bring the whole period of time to five years. The word "shall" denotes rather the happening of the event on which the exception is to apply than to the future relation of such event to the time after the act passed. It denotes the subjunctive mood rather than a future tense. The context confirms this view. The intention is to attach irremovability to a certain kind of residence. Why should a prisoner gain a privilege by being imprisoned? or why should a parish where a prison happens to stand be subject to a burthen? These reasons apply quite as much to that part of the residence within the enacting clause which had taken place before the passing of the act, as to that part which takes place afterwards; the one construction excepts all within the principle of the exception, the other leaves out part without any apparent reason. When one of two constructions consists with the intention of the legislature to be gathered from the statute, and the other is inconsistent therewith, the first is to be observed. The argument for the other construction rests principally on grammatical reasons, and the adoption of it is inconsistent with that construction of the statute which the Court believes to be the correct one. On this review of the statute, we are led to the conclusion that the excepting clause may apply to time within the enacting clause, although such time had elapsed before the statute passed.

Order of Sessions confirmed.

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[a] Argued before Lord *Denman*, C. J., *Coleridge*, *Wightman*, and *Erle*, JJ.

Doe dem. Pennington v. *Taviere*, Dec. 18, 1848.

RECEIPT OF RENT BY CORPORATION.—EVIDENCE OF DEMISE.

The Dean and Chapter of Canterbury, in the year 1836, granted a lease of certain premises at Walworth, for a term of 99 years, reserving a certain rent, which rent had been regularly received. It turned out that the Dean and Chapter, in granting this lease, had not pursued the powers given by an act of parliament, and that the lease was consequently voidable, if not absolutely void. No act being done by the Dean and Chapter to avoid the lease, the question was, whether the lessee should be considered as a tenant from year to year, and was entitled to notice to quit? In opposition to this view, it was submitted, that the Dean and Chapter were a corporation, and could only contract by deed under their seal, and that a yearly tenancy could not be created by the mere receipt of rent by a corporate body.

The *Court*, however, was of opinion, that the receipt of rent was evidence of a demise from year to year in the case of a corporation as well as against a private individual, and the Court would presume that everything had been done which was necessary to be done in order to make the contract a binding contract. This was not inconsistent with the rule which said that a corporation could only contract by deed under their common seal, upon which no opinion was pronounced.

Queen's Bench Practice Court.

Goy v. *Hall.* Michaelmas Term, Nov. 17, 1848.

WARRANT OF ATTORNEY.—ATTESTATION.

A warrant of attorney to confess judgment was attested by an attorney as follows:—"Signed, sealed, and delivered by the said Henry Hall, in my presence, and I declare myself to be attorney for the said Henry Hall, and that I subscribe my name as such attorney."

"George Overton, Solicitor, Merthyr."

Held, *that the attestation was sufficient, and that the words of the act of parliament had been sufficiently complied with.*

On a former day, *Greaves* obtained a rule calling upon the plaintiff to show cause why the warrant of attorney, the judgment signed thereon, and all subsequent proceedings, should not be set aside. The warrant of attorney was in the following form:—

"Signed, sealed, and delivered by the said Henry Hall, in my presence, and I declare myself to be attorney for the said Henry Hall, and that I subscribe my name as such attorney."

"Henry Hall."

"George Overton, Solicitor, Merthyr."

The rule was obtained on the ground that the attestation was insufficient, and on other grounds, the decision of which turned on the peculiar facts of the case.

Willes showed cause, and contended that the attestation was sufficient. The statute 1 & 2 Vict. c. 110, s. 9, not prescribing any particular form; everything has been stated on the attestation which is required by the act. He cited *Toel* v. *Dicker*, 2 Bail Court Rep. 129; 16 Law Jour., Q. B., 359, S. C. He also argued the case on the facts.

Greaves, in support of the rule. The present attestation is not in the usual and ordinary form, and is deficient in not stating that the attorney attended at the request of the defendant, and was expressly named by him. *Pope* v. *Kershaw*, 2 Bail Court Rep. 198; *Elkington* v. *Holland*, 9 M. & W. 659; *Hebbard* v. *Barton*, 10 M. & W. 678.

Cur. ad. vult.

Patteson, J. In this case two objections were taken to the attestation of the warrant of attorney:—first, with regard to the form of the attestation; and secondly, with respect to the fact of the attorney who attested the warrant of attorney having been expressly retained by the defendant and attending at his request. The attestation contains only the words—"Signed, sealed, and delivered by the said Henry Hall, in my presence, and I declare myself to be attorney for the said Henry Hall, and that I subscribe my name as such attorney."

"George Overton, Solicitor, Merthyr."

It did not state that Overton attended at the request of Henry Hall, or that he was expressly named by him. It has been contended that it is necessary that these two facts should appear on the face of the attestation, but it was not contended that the words of the act 1 & 2 Vict. c. 110, s. 9, expressly require it. Now, upon looking into the authorities, I do not find any case in which it has been determined that these two facts should appear on the face of the attestation at all. There are cases in which the Court has approved of their appearing on the face of the attestation, but I do not find any case in which the Court has held an attestation bad for their not appearing; and on looking at the words of the act of parliament, I think I am bound to hold that the requisites of the act have been complied with.

[The learned judge also decided the questions of fact in favour of the plaintiff.]

Rule discharged with costs.

Court of Common Pleas.

Ouden v. *Standish.* Nov. 11, 1848.

DUTY OF SHERIFF TO EXECUTE CA. SA.

Held, *that the apprehension of a rescue is not a sufficient excuse in an action against a sheriff for not executing a* ca. sa.

In an action against the sheriff of Lancashire for a false return to a writ of *ca. sa.*, it appeared that the defendant in the original action was a theatrical performer, and was pointed out to the sheriff's officer, on a stage at Liverpool, where he was performing, but the officer apprehending a rescue declined to arrest him at

the time, and failing to meet with him afterwards, returned *non est inventus*. Baron *Rolfe* (who tried the cause) told the jury, that the sheriff was bound to have taken care to have a sufficient power to make the arrest when the party against whom the writ was directed, was pointed out to him, he having authority, if necessary, to call out the *posse comitatus*. The jury having found against the sheriff, a rule *nisi* was obtained for a new trial, on the ground that the learned Baron had laid down the duty of the sheriff in terms too wide.

Upon consideration, however, the *Court* held, that the jury was properly directed. The principle laid down in the books was, that a sheriff was bound to provide such a force as would enable him to capture the debtor in spite of any reasonable resistance that he might expect. It was for a long time doubtful whether a return of a rescue could he held to be a good return, and sheriffs were so little favoured that it had been held that if a debtor were once lodged in gaol, and afterwards rescued on his way to chambers, the sheriff was held liable, ("*Compton* v. *Ward*," 1 Str. 430). That case had a distinct bearing on the present. It was argued in that case, that the sheriff ought to be provided with force enough to keep the prisoner when arrested; but the answer was (in indulgence to the sheriff), that he could not always have the *posse comitatus* with him, and that, therefore, the return of a rescue was a good return. But the indulgence ought not to be extended. Rule discharged.

Cowling v. *Cox*. Dec. 7, 1848.

EXCUSE FOR NON-ATTENDANCE AS A WITNESS.

In an action for non-attendance on a subpœna, held, *that a plea, stating that plaintiff had not a good cause of action in the original suit, was bad after verdict.*

In an action on the case, for not obeying a *subpœna ad testificandum*, by reason whereof the plaintiff was obliged to withdraw the record in the said action, and was compelled to pay the costs of the day, &c. The defendant pleaded, amongst other things, that the plaintiff had not a good cause of action against the defendant in the former suit, in which the present defendant was subpœnaed as a witness. The issue raised on this plea having been found for the defendant, and all the other issues for the plaintiff, a rule was obtained to enter the judgment for the plaintiff on this issue also, *non obstante veredicto*.

And the *Court of Common Pleas*, after taking time for consideration, determined that a plea putting in issue the plaintiff's right to recover in the original action was not an answer to an action for non-attendance as a witness upon a subpœna. The plaintiff having previously succeeded before the jury upon the other issues, it was now directed that he should have judgment on this issue also, and generally in the action.

Court of Exchequer Chamber.

Nivens and another v. *Henderson and Bowstead*, Dec. 2, 1848.

LIABILITY OF PROVISIONAL COMMITTEEMEN.

Held, *by Court of Error, affirming decision of Exchequer, that provisional committeemen are not partners.*

Held, *also, that an action cannot be supported for work and labour against a provisional committee-man as such, unless he employs the plaintiff himself, or by an authorised agent, or adopts the act of an unauthorised agent.*

Upon the trial of an action by surveyors, for work and labour, against certain members of the provisional committee of the Lancaster and Newcastle-upon-Tyne Railway Company, Baron Rolfe, in conformity with the decisions of the Court of Exchequer, directed the jury that provisional committee-men were not partners, and could not be rendered responsible in cases of this nature, unless they employed the plaintiffs, or authorised some person to employ them, or that some one, without the defendants' authority, employed the plaintiffs as defendants' agents, and the defendants afterwards ratified the act of such agent. A bill of exceptions was tendered to the learned Baron's ruling, with the avowed intention of taking the opinion of a Court of Error, upon the principle applicable to provisional committee-men, as laid down by the Court of Exchequer, in *Wyld* v. *Hopkins*, and *Reynell* v. *Lewis*, 15 Mees. & W. 517.

The Court of Error (without calling upon the defendants' counsel) determined that the learned Baron's direction to the jury was perfectly correct. Wishing it to be understood that the Court threw no manner of doubt upon the decisions of the Court of Exchequer, in the cases referred to, it was observed, that even if provisional committee-men were to be considered as partners, and that one or more committeemen had been proved to have employed the plaintiffs, such committee-men would have been authorised agents, and therefore the direction at the trial would have been correct.

This decision is important, as indicating, for the first time, the concurrence of the three Superior Courts of Law, in the principles upon which the liability of provisional committeemen in joint-stock companies is to be determined.

Nisi Prius.

(*Coram* Pollock, C. B.)

Manning v. *Wilkin*. Dec. 7, 1848.

ACTION FOR NEGLIGENCE AGAINST AN ATTORNEY, WHEN NOT MAINTAINABLE.

In an action for negligence against an attorney for preparing a deed of assignment of lease, varying from an agreement, upon which an action was brought, and the present plaintiff, by reason of the variance was nonsuited, it appeared that the defendant had consulted pleader upon the matter, and that the action proceeded upon his advice. In summing up the case to the jury,

Pollock, C. B., observed, that "an attorney was bound to use due attention and skill and all reasonable care; but it must be remembered that an attorney was not an insurer by any law, the same as a carrier was; he could not insure the result of a cause; and he must say that he should be much astonished to hear a jury say "that an attorney had been guilty of want of reasonable care where he had taken and acted upon the opinion of an eminent pleader."

The *Jury*, after a short consultation, returned a verdict for the defendant.

Williams v. *Deacon and others*. Dec. 8, 1848.

PAYMENT TO BANKERS' AGENTS EQUIVALENT TO PAYMENT TO PRINCIPAL.

On the 14th October, 1847, a check for 127*l.* 5*s.* 9*d.* was paid into the banking house of Williams, Deacon. & Co., of Birchin-lane, "to the credit of James Williams, Esq., in account with Messrs. Knapp & Co., of Abingdon, Bankers." On the same afternoon, or the next morning, Knapp & Co., stopped payment; and on the afternoon of the 15th October, Williams, Deacon, & Co., wrote to Knapp & Co., advising them that they had received the said sum of 127*l.* 5*s.* 9*d.*, and given them credit for it in account, Knapp & Co. having at that time overdrawn their account with Williams, Deacon, & Co., to the extent of about 6,000*l.* Knapp & Co. afterwards became bankrupt, and James Williams brought his action against Williams, Deacon, & Co., for the amount of the check paid into their bank.

Pollock, C. B., held, that the plaintiff was not entitled to recover, as the payment to Knapp & Co.'s agents was the same as if the payment was directly made to Knapp & Co. Had Knapp & Co. received the check, they could not refund the amount without a fraudulent preference, and their agents could not be compelled to refund. A bill of exceptions was tendered to this ruling.

Watson v. *The Earl of Charlemont and others*, Nov. 23, 1848.

ACTIONS BY RAILWAY DEPOSITORS, WHEN MAINTAINABLE AGAINST PROVISIONAL DIRECTORS.

It has been clearly laid down in two recent cases, that an action for money had and received will not lie by a railway allottee, to recover deposits from provisional directors, unless it appears that the money deposited came into the hands of the defendants, or that they exercised some control over it. This rule has been distinctly propounded in a deliberate judgment of the Queen's Bench, after a consideration of the well-known cases of *Walstabb* v. *Spottiswoode*, 15 Mees. & W. 501; and *Wontner* v. *Shairp*, 4 Com. Bench, 404; and although the plaintiff, in the first instance, recovered a verdict, a nonsuit was ultimately directed to be entered, upon this ground, in this case.

Gurney v. *Lord Ingestre*. Dec. 20, 1848.

ACTION BY RAILWAY DEPOSITORS.

In this more recent case, tried at the Guildhall Sitting, the Lord Chief Baron expressed a decided opinion in conformity with the principle laid down in the judgment above cited, holding that the action for money had and received will not lie, unless the deposit is paid to the account of the defendant personally, or it can be shown that he has exercised some control over the disposal of the fund.

Court of Reserved Criminal Cases.

The Queen v. *George York*. Dec. 9, 1848.

KEEPING LOST ARTICLE, WITH VIEW TO REWARD.

It appeared upon a case sent up from the Northampton Quarter Sessions, that a person named *George York*, found a watch at a fair, and retained possession of it for the purpose of obtaining a reward.

A verdict of guilty was entered against him, but the Court for the consideration of Reserved Criminal Cases, held, that, upon these facts, the prisoner ought not to have been found guilty of larceny, and directed the judgment to be reversed.

Danes v. *Hartley*. Jan. 14, 1848.

LAW OF EVIDENCE.—SHAPE OF QUESTION.

A witness who deposed to having heard a certain expression used by one of the parties to an action was asked—"What did you understand by that?" and the question being objected to, the Lord Chief Baron, who tried the cause, ruled that the question could not be put in that shape. The counsel refused to put the question in a different shape, and applied to the Court for a new trial, on the ground that evidence had been improperly rejected.

The *Court* after taking time to consider, held, that the question could not be put in the shape proposed, without laying a foundation for it by showing that the words to which the question applied were not used in their ordinary sense, or had a technical application. Without laying such a foundation, the question could not be so put.

Judges' Chambers.

(Before Mr. Baron Platt.)

M'Cabe v. *Lord Harley*. Jan. 1, 1849.

PRIVILEGE OF PEER FROM ARREST.—EFFECT OF DISCHARGE.

A peer of the realm imprisoned on writs of execution, is entitled to be discharged, notwithstanding he has not taken his seat nor the oaths prescribed.

Quære, ***whether the discharge extinguishes the debts of the detaining creditors?***

The Hon. Alfred Harley, commonly called

Lord Harley, was detained in the custody of the keeper of the Queen's Prison, under judgment debts. His father, the Earl of Oxford, having died, the defendant succeeded to his titles, and this application was made by Mr. Canfield, his solicitor, to discharge his lordship from custody.

The attorneys of the judgment creditors attended the learned Baron, and the defendant was discharged in several cases by consent.

The counsel for the plaintiff contended that the privilege of a peer was not available until he had taken the prescribed oaths.

Platt, B., ordered that the defendant should be discharged from custody, and said that he entertained no doubt as to a peer being privileged from arrest, even before he had taken his seat, or the prescribed oaths. His Lordship left untouched the question as to whether the discharge would extinguish the several debts of the detaining creditors, or whether the judgments would survive.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRACTICE.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75.

Law of Costs, p. 35.

Law of Evidence, p. 56.

Law of Property and Conveyancing, p. 113.

Principles of Equity, p. 134

Law of Bankruptcy, 158.]

AFFIDAVIT.

See *Amendment*, 4; *Motion*.

AMENDMENT.

1. *Second order.*—After answer, a plaintiff obtained an order of course to amend. He then made *A.* a party; but finding that *A.* was dead, he, before answer to the amendment, obtained a second order of course to amend, and substituted *A.*'s representatives with apt words to charge them. The second order was discharged for irregularity, with costs. *Horsley* v. *Fawcett*, 10 Beav. 191.

2. *Irregularity.*—A party obtained from the Court, after answer, the common order to amend. Afterwards, and within six weeks after the last answer was sufficient, he obtained an order of course to amend: *Held*, that such an order was irregular. *Edge* v. *Duke*, 10 Beav. 184.

3. *General orders. — Irregularity.* — The Orders of 1845 do not limit the time within which an application for an order to amend is to be made to the Master.

After the expiration of the time for obtaining an order of course to amend, the plaintiff, being unable to make the affidavit required by the 68th Order, applied to the Court, in the first instance, simply for leave to amend, and obtained the order on affidavit of service: *Held*, that the order was irregular, and it was discharged.

Semble, that the application ought to have been made to the Court, under the 21st Order, to enlarge the time for obtaining the order to amend without the special affidavit. *Potts* v. *Whitmore*, 10 Beav. 177.

4. *Affidavit. — New Orders.* — The affidavit required by the 67th Order of May, 1845, on a special application to amend an information, must be made by the solicitor to the relators. *Attorney-General* v. *Wakeman*, 15 Sim. 358.

See *Jurisdiction*, 1; *Master's Jurisdiction*.

ANSWER.

See *Time*.

APPEAL.

See *Staying Proceedings*.

COPYRIGHT.

See *Injunction*.

DECREE.

1. *40th General Order of August*, 1841.—Where it appeared, by a statement in an answer, that *C.*, who was not a party to the suit, had an interest in the subject-matter of the suit, but the objection, on account of *C.*'s absence, was not taken by any of the answers: *Held*, that this was a case within the 40th of the General Orders of August, 1841, and the Court made a decree in the suit saving the rights of *C.* *Feltham* v. *Clark*, 1 De G. & S. 307.

2. *Equivalent to judgment debt.*—Decree for specific performance, with references to the Master to compute interest and tax costs, and ordering defendant to pay purchase-money and interest, and costs, when ascertained: *Held*, to constitute a judgment debt. *Duke of Beaufort* v. *Phillips*, 1 De G. & S. 321.

3. *45th Order of April*, 1828.—*Omission of usual Direction.*—The accidental omission of a usual term or direction in a decree or order is an error which may be corrected by petition under the 45th Order of April, 1828; but not so the omission of any term or direction which would only have been introduced under the express judgment of the Court. *Bird* v. *Heath*, 6 Hare, 236.

4. *Producing original copy of the decree.*—The representative of a mortgagor, who had obtained a decree for redemption, ordered, on the petition of the mortgagee, to produce the original decree for the purpose of correction. *Bird* v. *Heath*, 6 Hare, 236.

DEMURRAL.

See *Irregularity*.

EXCEPTIONS.

1. *Impertinence.* — Where the Master has expunged matter in a state of facts for impertinence, he should, nevertheless, issue his certificate thereupon, in order that the opinion of the Court may be taken, if requisite.

To such certificate exceptions may be taken. *Raven* v. *Kerl*, 1 De G. & S. 236.

2. *Postponing confirmation of Report until hearing.*—Where one of the principal facts relied upon by defendants, contending, on a reference before the Master, that a suit was not for the benefit of the infant plaintiffs, was, that the assets were too small to justify the proceeding: *Held*, that, as this fact could not be properly determined by the Court, on exceptions to the report, finding in favour of the prosecution of the suit, such exceptions must be overruled, reserving the costs, and detaining the deposit.

But, upon the plaintiffs afterwards presenting a petition to confirm the report, the Court, on the defendant's undertaking to offer no obstacle to the cause being heard, whenever the plaintiffs should think fit, directed the petition to stand over till the hearing.

Quære, whether the proper mode of appealing from the Master's decision, in such a case, is by filing exceptions, or by opposing the petition to confirm the report. *Raven* v. *Kerl*, 1 De G. & S. 242.

3. *Impertinence.* — *Report of Master.* — *Semble*, that an exception to the report for that the Master has found the state of facts impertinent, from the word "&c." to the word "&c.;" whereas the Master ought not so to have found, but ought to have found that the same was not impertinent, is sustained if any part of the passage is pertinent.

Where there is a doubt as to a passage being impertinent, it should be retained and considered on the question of costs. *Raven* v. *Kerl*, 1 De G. & S. 236.

Cases cited in the judgment: Davis v. Cripps, 2 Y. & C., C. C. 430; Parker v. Fairlie, Turn. 362.

GUARDIAN AD LITEM.

Commission.—*Infant.*—Upon an application to appoint a guardian *ad litem* to an infant residing within the jurisdiction, his appearance in Court will not be dispensed with, unless under very special circumstances. *Baynton* v. *Hooper*, 10 Beav. 168.

GUARDIAN AND WARD.

Promissory note. — *Injunction.* — Where a promissory note had been drawn by *A.*, endorsed by plaintiff, and given to defendants by the drawer in payment of money due; and it appeared that the defendants, at the time they received the note, knew that the relation of guardian and ward had previously existed between the parties, and that the drawer had been in difficulties: *Held*, that it was incumbent on the defendants, at the time they took the note, to have inquired of the plaintiff the circumstances under which it had been indorsed by her; and a motion to dissolve an injunction restraining an action at law on the note refused. *Maitland* v. *Backhouse*, 35 L. O. 116.

IMPERTINENCE.

See *Exceptions*, 1, 3.

INFANT.

See *Guardian ad litem*.

INJUNCTION.

1. *Copyright.*—The Court, on a question of injunction relating to copyright, before the legal title is established, will give great weight to the consideration of the question, which of the parties to the dispute is more likely to suffer by an erroneous or hasty judgment thereon, and to the consideration of the very possible, if not probable, effect which an injunction may have to the defendant's prejudice in an action. *M'Neill* v. *Williams*, 34 L. O. 203.

2. *To restrain mowing.*—A devise of a park to successive tenants for life, with remainder in tail, contained a proviso that neither a specified tenant for life, nor any other person, should mow any part of the park; but there was no executory devise over in the event of this restriction being broken: *Held*, that the restriction was one which might be enforced by injunction. *Blagrave* v. *Blagrave*, 1 De G. & S. 252.

3. *Unauthorised use of name.*—The Court will not restrain the unauthorised use of the name of any person, where no actual or probable injury to his property can be shown to arise from the use of it. *Clark* v. *Freeman*, 35 L. O. 436.

And see *Guardian and Ward; Jurisdiction*.

INTEREST.

New orders.—*A.* claimed a debt before the Master, in an administration suit. The executors resisted the claim, and the Master disallowed it; but a suit was afterwards instituted in which the claim was established, and liberty was given to *A.* to apply for payment of his debt in the administration suit.

Held, that, as he had not established his debt in that suit, he was not entitled to interest upon it, under the 41st General Order of August, 1841. *Davis* v. *Combermere*; *Davis* v. *Morier*, 15 Sim. 394.

IRREGULARITY.

Demurrer.—*Dismissal.*—A demurrer being overruled with costs, the defendant appealed. The plaintiff afterwards obtained an order of course to dismiss his bill with costs, suppressing the fact of the allowance of the demurrer; it was discharged for irregularity. *Lewis* v. *Cooper*, 10 Beav. 32.

See *Amendment*, 1, 2; *Master in Rotation*.

JUDGMENT DEBT.

See *Decree*, 2.

JURISDICTION.

1. *Taking amendments off file.*—The Master of the Rolls has no jurisdiction, in a Vice-Chancellor's cause, to order amendments, made under an irregular Rolls' Order, to be taken off the file. *Edge* v. *Duke*, 10 Beav. 184.

2. *Preventing injustice by enforcing orders.*—The Court has sufficient authority, when the occasion requires its exercise, to prevent parties converting its own rules, and the sanctions employed to enforce them, into the means of injustice. *Lord Suffield* v. *Bond*, 10 Beav. 146.

3. *Injunction.*—Order made in a summary way, to restrain a person, not a party to the suit, to whom the receiver had let a farm, part of the estates in the cause, from removing hay, straw, &c. therefrom. *Walton* v. *Johnson*, 15 Sim. 352.

Case cited: Onslow v. ———, 16 Ves. 173.

LETTERS OF ADMINISTRATION.

See *Transfer of Stock*.

MARRIED WOMAN.

Payment of small amount ordered at hearing of cause without petition.—Where the Master finds by his report that there is no settlement of a fund in Court, to which a married woman is entitled, it is the general rule, that application should be made for payment to the husband by petition presented after the decree on further directions has been made, in order that it may be in evidence before the Court, by affidavit, that, at the date of the decree on further directions there was no settlement of the fund in Court; yet when the sum is small, (under 200*l*.), and all parties to the suit consent, the Court will not put the parties to the expense of a petition, but insert an order for payment to the husband in the decree on further directions. *Hedges* v. *Clarke*, 1 De G. & S. 354.

MASTER IN ROTATION.

Irregularity.—During the long vacation, the defendant, for the purpose of obtaining a reference to the Master, procured the record and writ clerk's certificate, which was marked at the public office, with the name of the Master in rotation. He neglected, however, to return it to the record and writ clerk to be filed. In the next term, the plaintiff obtained a reference of exceptions as to insufficiency to *another* Master, as if there had been no previous reference, and who certified the answer insufficient: *Held*, that the latter proceeding was irregular, and that the defendant was not bound by the certificate; but as the defendant himself had been irregular, the Court would not discharge the certificate simply, so as to dissolve the injunction and make the answer sufficient, but did so without prejudice to the injunction, and referred the exceptions to the proper Master on the usual terms. *Lord Suffield* v. *Bond*, 10 Beav. 146.

See *Vacation Master*.

MASTER'S JURISDICTION.

Amendment.—The Masters have no jurisdiction to give liberty to amend without prejudice to an injunction. *Edge* v. *Duke*, 10 Beav. 184.

See *Time to Answer*.

MOTION.

Notice.—Affidavit of service.—Appearance on a motion.—An order made upon affidavit of service of the notice of motion, must not depart from the terms of the notice, even though it be less extensive than the motion, if such less extensive order may be more prejudicial to the party against whom it is made than would have been the larger order which was asked.

The notice was, that the Court would be moved to dismiss an original and a supplemental cause, or to direct the original cause to be put into the paper for hearing; the order made upon affidavit of service was, that the supplemental cause should be dismissed, and the original cause put in the paper: the Court, upon motion, discharged the order. *Hutton* v. *Hepworth*, 6 Hare, 315.

PRIVILEGE FROM ARREST.

Attending Registrar's Office.—A party in a cause, who is interested in a decree which has been pronounced, is privileged from arrest in attending the Registrar's Office, on passing the minutes of the decree. *Newton* v. *Askew*, 6 Hare, 319.

PRODUCTION OF DOCUMENTS.

Staying proceedings in a suit.—Lord P., having conveyed his estates to trustees, in trust to raise money for payment of his debts, and subject thereto, in trust for himself, a suit was instituted, by one of his creditors, against him and his other creditors, to have the trusts of the deed carried into execution. After the defendants had answered the bill, and the deeds relating to the estates had been deposited in the Master's Office, Lord *P.* died, having devised the estates to his nephew, who, after he had been made a defendant to a supplemental bill, entered into a treaty with an insurance company for a loan to enable him to pay off the debts due to the plaintiff and the other parties to the suit; and, after giving them notice of his intention to pay them off, he moved that all further proceedings in the suit might be stayed, and that he and his solicitors and the solicitors and agents of the insurance company, might be at liberty to examine the abstracts of title to the estates, with the deeds in the Master's Office, and to take copies thereof, for the purpose of verifying the title to the estates, and effecting the loan; and that for the same purpose, the plaintiff and two of the defendants might be ordered to produce to him and his solicitors, and to the solicitors as agents of the insurance company, all deeds &c., in their custody relating to the estate. Motion refused, with costs. *Damer* v. *Earl Portarlington*, 15 Sim. 381.

See *Decree*, 4.

PURCHASER.

Confirming report.—Seal day.—Where

purchaser under the Court obtains the order *nisi* to confirm the report, but neglects to make it absolute, the plaintiff may do so by motion of course. An order absolute to confirm the Master's report of best purchaser ought to be obtained on a seal day. *Robertson* v. *Skelton*, 10 Beav. 197.

REPORT.

See *Exceptions*, 2, 3; *Purchaser*.

SERVICE OF COPY BILL.

1. *General Orders.*—A copy bill was served, without leave, after the expiration of 12 weeks. The Court, on the joint application of the plaintiff and the defendant, gave liberty to enter a memorandum of service. *Tugwell* v. *Hooper*, 10 Beav. 19.

2. *23rd Order of August*, 1841.—A bill was filed, and a copy served on one of the defendants to it, against whom no relief was sought by the bill under 23rd order of August, 1841. The bill was afterwards amended, but no copy of the amended bill was served on that defendant. After the decree was obtained, an objection to drawing it up was raised in the Registrar's Office, on the ground that it was incumbent on the plaintiff to serve a copy of the amended bill.

Held, that, as the defendant might have desired to answer the bill in its amended form, he should have an opportunity of so doing, and a motion to order the decree to be drawn up was refused. *Anon.* 1 De G. & S. 321.

SERVICE OF TRAVERSING NOTE.

See *Traversing Note*.

STAYING PROCEEDINGS.

Appeal.—A demurrer had been allowed with costs, but an appeal had been heard, and was standing for judgment. A motion to stay the proceedings for costs was refused with costs. *Bainbrigge* v. *Baddeley*, 10 Beav. 35.

See *Production of Documents*.

TIME TO ANSWER.

Principles on which the Court reviews the Master's decision.—Part of the assets of a testator were in course of administration in India by an official administrator appointed there. Before they were completely administered, a legatee's suit was commenced in this country against the executrix, who had proved the will here, and who, after obtaining from the Master successive orders extending the time for putting in her answer, obtained one more order, giving her six weeks' further time. This order was made upon an affidavit of her solicitor, setting out a letter from the Indian administrator, who promised to remit the balance due from him by the next mail, and stating that the receipt of this balance and of the administrator's accounts were necessary to enable the plaintiff to put in a complete answer: *Held*, that although the Court might not itself have thought fit to grant the indulgence, the order ought not to be discharged. Principles on which the Court proceeds in reviewing the Master's decision on such points. *Nott* v. *Nott*, 1 De G. & S. 373.

TRANSFER OF STOCK.

Letters of administration.—Stock in Court ordered to be transferred to a person claiming it under letters of administration granted, not by the Prerogative Court of Canterbury, but by the Consistorial Court of London. *Druce* v. *Denison*, 15 Sim. 356.

TRAVERSING NOTE.

Service on defendant.—Personal service of a traversing note may be made, (by leave of the court, independently of the General Orders), upon a defendant, who has not taken any step to defend the suit either in person or by a solicitor, and where the service cannot, therefore, be made in the manner directed by the 56th General Order of May, 1845. *Laurie* v. *Burn*, 6 Hare, 308.

VACATION MASTER.

General orders.—As to common matters which occur in vacation, the vacation Master acts, and is considered as acting, for the several Masters in rotation, to whose offices such matters respectively may belong; and, therefore, in the vacation, the production to the vacation Master of the certificate is a sufficient compliance with the 17th Order of December, 1833, which requires its production to the Master in rotation. *Lord Suffield* v. *Bond*, 10 Beav. 146.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

Lord Chancellor.

Hilary Term, 1849.

AT LINCOLN'S INN.

hursday . Jan. 11	Appeal Motions and Appeals.	
riday 12	(Petition-day) Petitions and Appeals.	
Saturday . . . 13	Appeals.	
Monday . . . 15		
Tuesday . . . 16		
Wednesday . . 17		
Thursday . . . 18	Appeal Motions and Appeals.	
Friday 19	(Petition-day) unopposed Petitions and Appeals.	
Saturday . . . 20	Appeals.	
Monday . . . 22		
Tuesday . . . 23		
Wednesday . . 24		

Thursday	25	Appeal Motions and Appeals.
Friday	26	(Petition-day) unopposed Petitions and Appeals.
Saturday	27	Appeals.
Monday	29	
Tuesday	30	
Wednesday	31	Appeal Motions and Appeals.

Master of the Rolls.

AT LINCOLN'S INN.

Thursday	Jan. 11	Motions.
Friday	12	Petitions in General Paper.
Saturday	13	Pleas, Demurrers, Causes, Further Directions, and Exceptions
Monday	15	
Tuesday	16	
Wednesday	17	
Thursday	18	Motions.
Friday	19	
Saturday	20	Pleas, Demurrers, Causes, Exceptions, and Further Directions.
Monday	22	
Tuesday	23	
Wednesday	24	
Thursday	25	Motions.
Friday	26	Pleas, Demurrers, Causes, Exceptions, and Further Directions.
Saturday	27	
Monday	29	
Tuesday	30	Petitions in General Paper.
Wednesday	31	Motions.

Short Causes, Consent Causes, and Unopposed Petitions, every Saturday at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor of England.

AT LINCOLN'S INN.

Thursday	Jan. 11	Motions.
Friday	12	(Petition-day) Petitions and Short Causes.
Saturday	13	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	15	
Tuesday	16	
Wednesday	17	
Thursday	18	Motions.
Friday	19	(Petition-day,) Petitions (unopposed first,) Short Causes, and Causes.
Saturday	20	Pleas, Demurrers, Exceptions, Causes, and Further Dirs.
Monday	22	
Tuesday	23	
Wednesday	24	
Thursday	25	Motions.
Friday	26	(Petition-day) Petitions, (unopposed first,) Short Causes and Causes.
Saturday	27	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	29	
Tuesday	30	
Wednesday	31	Motions.

Vice-Chancellor Knight Bruce.

AT LINCOLN'S INN.

Thursday	Jan. 11	Motions.
Friday	12	(Petition-day) Petitions and Causes.
Saturday	13	Short Causes, Pleas, Demurrers, Exons., Causes, and Fur. Dirs.
Monday	15	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	16	
Wednesday	17	Bankrupt Petitions.
Thursday	18	Motions.
Friday	19	(Petition-day) Petitions and Causes.
Saturday	20	Short Causes and Causes.
Monday	22	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	23	
Wednesday	24	Bankrupt Petitions.
Thursday	25	Motions.
Friday	26	(Petition-day) Petitions and Causes.
Saturday	27	Short Causes and Causes.
Monday	29	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	30	
Wednesday	31	Motions.

Vice-Chancellor Wigram.

AT LINCOLN'S INN.

Thursday	Jan. 11	Motions and Causes.
Friday	12	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	13	Short Causes, Petitions, (unopposed first,) and Causes.
Monday	15	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	16	
Wednesday	17	
Thursday	18	Motions and Ditto.
Friday	19	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
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Monday	22	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
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Friday	26	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	27	Short Causes, Petitions (unopposed first,) and Causes.
Monday	29	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	30	
Wednesday	31	Motions and ditto.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JANUARY 13, 1849.

"——Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

RETAINERS OF COUNSEL.

LETTER FROM A BARRISTER.

To the Editor of the Legal Observer.

SIR,—It is the fate of public bodies, as well as of individuals, to find their most disinterested, and it may be judicious, efforts to benefit the many, complained of, objected to, and misinterpreted. It must be admitted that the members of the legal profession cannot claim any exemption from this querulous propensity. Their education, habits, and duties, perhaps, render them peculiarly acute in discovering real or supposed grievances, and the facility of finding fault encourages its indulgence.

To the prevalence of some such disposition on the part of my brethren at the Bar, I incline to ascribe the captious and unfounded objections taken to the publication, by the Incorporated Law Society, of the "Rules of Practice relating to the Retainers of Counsel," and adverted to in your last publication. No branch of practice could be suggested, in respect to which it is more desirable that plain, intelligible, regulations should be universally known and observed, and no proceeding has taken place, within my recollection, promising to be productive of a greater amount of convenience and advantage to the public and the profession at large, but *more especially to the Bar*, than the circulation of the code of rules, which has been the subject of such unfair remark. Every member of the Bar, who has had extensive business at Sessions, on Circuit, or in the Superior Courts of Law and Equity, must know, from painful experience, how much vexation, annoyance, and loss has arisen from the unsettled state of the practice regarding retainers, and the difficulty, and in most cases the impossibility of resorting, with sufficient promptitude, to any tribunal by which doubtful questions may be authoritatively and satisfactorily adjusted.

According to the practice which has hitherto prevailed, when the clerk of a barrister entertains any doubt as to the propriety of accepting a proffered retainer, he seeks advice from some other clerk—generally the clerk of a leader or of the Attorney-General—in whose judgment and experience he has confidence, and refuses or accepts the proffered retainer in conformity with the opinion thus obtained by him. Perhaps, after an interval of several months, the attorney or solicitor for the opposite party desires a conference, or delivers a brief, and sometimes *after* the conference has taken place, is informed that the barrister, who he supposed had been retained by him, felt himself at liberty to take, and had accepted, a retainer on behalf of the adverse party. This intimation is generally considered conclusive, and acquiesced in. The party whose brief has been rejected deems himself aggrieved, but in the uncertainty which prevails, he has no very definite idea of his rights; and if his conception should be ever so clear on this point, he does not exactly see how he can successfully assert them, and not knowing in what spirit an appeal from the deter-

mination of the clerk to the principal may be met, generally thinks it wisest to submit, often, as may be expected, with a very bad grace. In a vast majority of the cases in which disputes arise with respect to retainers, the course of procedure and the result are as stated. In those cases, therefore, the whole matter is disposed of by the clerk, constantly without communication with, or reference to, his master, and usually in deference to the views of some other clerk, who may or may not be peculiarly competent to form an opinion upon that or any similar question.

The consequence of this state of things is, that the regulations which generally govern the Bar in regard to retainers have been for the most part made by the clerks; and not only have they the power of making rules, but they also exercise the power of altering and modifying those rules. For example, until within the last dozen years, no one supposed that a retainer was lost by giving a brief to a junior only, upon an ordinary interlocutory application, where the taxing officer would not allow for a second brief, and the services of a senior could not be required. Two or three clerks of leading counsel in the Courts of Equity, however, have thought it convenient to establish the rule, that if a brief is not delivered upon every motion made in Court, the retainer becomes inoperative. This regulation is obviously as injurious to the junior Bar as it is unfair to the public. Many of your readers will be able, I doubt not, to corroborate my assertion, that it is a modern innovation, and I rejoice to find, by the Rules promulgated by the Council of the Law Society, it is proposed to restore the practice which prevailed when I was called to the Bar.

Before concluding the remarks which I have taken leave to offer as to the influence of the clerks in regulating the practice relating to retainers, let me guard against being understood to reflect disparagingly upon that useful and generally respectable body of men. As the profession is constituted, their services are indispensable, and often invaluable; but no one disposed to discuss the subject candidly will contend, it is desirable that a matter involving the honour and feelings of the Bar, should be left so much in the discretion of clerks.

To complete my sketch of the existing practice, it is necessary I should advert to those cases where the arbitrament of the clerk is not considered final, but where the solicitors concerned for hostile parties respectively, insist upon having the services of the counsel, and a personal appeal can no longer be avoided. In those cases which, as already observed, are the exceptions to the general practice, the barrister adopts one of two courses. He refers the disputed point to the leader of the Court or Circuit, or to the Attorney-General; or he declines acting for either of the parties claiming to be entitled to his services. The latter course is more consonant with the feeling which usually influences the members of the Bar, and is the course most frequently adopted. The reference to another counsel, or to the Attorney-General, is always inconvenient, and often unsatisfactory. When a question of Bar practice arises, upon which a difference of opinion exists, it can only be settled authoritatively by the Attorney-General. The gentleman holding that office is usually pretty well occupied by public and professional business, and, without insinuating that he would decline to entertain any question of this nature, properly submitted to him, I may observe that, if called upon to decide even a tithe of the questions arising, it would be a serious addition to his public duties; to which I may add that his opinion could seldom be obtained early enough to render it practically useful; and for this and other obvious reasons, the Attorney-General is rarely called upon to interfere in such disputes.

The practice being as I have stated, and the uncertainty which prevails as to the rules which should govern us as to retainers, occasionally placing every member of the Bar in a position at once painful and embarrassing, I think I cannot be singular in considering, that the promulgation of regulations on this subject, by a body representing the largest branch of the profession, is a proceeding for which the whole profession, and particularly the Bar, should feel grateful.

The form and effect of the rules are matters, in my opinion, comparatively immaterial to the barrister. What we want to know is, what rules exist, and where they may be found and referred to by the client. The rules proposed by the Law Society are admitted, on all hands, to be "in the main rational and fit to be adopted." This is just what was required, and *all* that was required. If the rules had been collected and settled by the Benchers of the several Inns of Court, or by the Attorney or Solicitor-General, or by a committee selected by the Bar, could any better result be anti-

cipated? Considerations of delicacy, which I need not advert to, have hitherto prevented, and must always preclude the persons referred to, from undertaking the task so carefully and usefully performed by the Council of the Law Society; but if their combined attention had been directed to the subject, would it have produced a nearer approach to unanimity amongst the members of the Bar? This, I think, is more than doubtful.

In the criticisms I have heard and read upon the rules recently circulated, it appears to have been forgotten that they are, for the most part, a declaration of the practice which exists, and an endeavour to render it uniform, rather than the creation of a new code of practice. For instance, it is suggested, that there would be a great indelicacy in allowing a clerk to inform a retaining client that the solicitor for the adverse party tendered a brief or a special retainer. If there be any impropriety in such a proceeding, I can only say that it has been constantly adopted by members of the Bar, who were ignorant that, by causing such a communication to be made, they were infringing any rule of etiquette. So far as I can learn, this course has been constantly pursued where a counsel is generally retained, and a brief has been offered for a different party. The difficulty was felt when there was not a general retainer, but the counsel had acted or advised in an earlier stage of the cause. Nothing occurring in a barrister's practice can be more annoying and repugnant than to have had a personal conference with a client, mastered the intricacies of his case, and discussed its difficulties, and to find yourself subsequently holding a brief at the opposite side. It may be that the whole, or the greater part, of what passed in the early conference has escaped from your memory, though, upon this point, I must admit, there is sometimes an affectation of forgetfulness, when the mind is not in total oblivion. It is quite true, men do not recollect the minute facts of a case they have read or heard some months before, any more than they do the particulars of a tale or a novel, but one fact frequently recalls another, and if information is derived from different sources, when it comes to be used and applied some time after, it is quite impossible for the counsel to distinguish and appropriate each particular fact as it recurs to his memory. There is no man fit to be at the Bar—and I hope no man at the Bar—who would wilfully use the information obtained in professional confidence from a client, to his disadvantage; but it is just possible this may be done involuntarily, and the suspicion is painful and degrading. But, apart from this, meeting a party as an adversary with whom you had shortly before communicated in the same cause, as a client, is always embarrassing and disagreeable to the counsel, and is frequently rendered more annoying and irritating to the client, by the conviction that it has been produced by some unworthy dexterity on the part of his adversary. In nineteen cases out of every twenty, these unpleasant consequences will be avoided, by sending to the earlier client the notice suggested in the rules recently published; and as a general form of notice might be readily framed and used by our clerks, the object of sending such a notice would be universally understood, and no apprehension need be felt that we should be open to the imputation of soliciting briefs. I shall gladly avail myself of some future opportunity to examine in detail, the objections taken to some two or three of the published rules; but as I have already trespassed so much on your space, I shall at present content myself with repeating, that the Law Society, by the collection, consideration, and publication of the Rules relating to Retainers, has done good service to the profession, and that their labours in this respect are appreciated by

A Barrister.

NOTES ON THE RETAINER RULES.

We most gladly give insertion to this able, just, and liberal communication from a member of the Bar, and understand that several others in extensive practice and with much experience on the subject, have expressed their approval of the Retainer Rules, collected and published by the Incorporated Law Society.

Some misunderstanding appears to have arisen amongst some of the junior Bar, at the supposed "assumption of the Incorporated Law Society of the right of making Rules for the Bar." We venture to assert, that no such attempt has been made by that Institution. Its Council collected all the information that could be obtained on the subject for the guidance of *their own branch of the profession*. They submitted such information to each of the Inns of Court, collectively representing the Bar, and to all the leading counsel individually; and, so far as they were favoured with communications, corrected or altered the regulations by which they proposed to be-governed. It

may be regretted that neither the Benchers nor the leading Counsel deemed it necessary or proper to inform their brethren of the Outer Bar, of the communications made to them by the larger branch of the profession representing the suitors of the Courts. However this may be, we are sure there was no intention on the part of the Law Society to omit any point of respect due to the Bar.

We trust it will be recollected that these Rules are mainly calculated to prevent a barrister from being compelled to do that which he cannot but dislike, and which, if attempted by an attorney, would subject him to an injunction, if not to an application to strike him off the Roll. *Ambi-dexterity* in former times was severely punished, and in our day, an attorney who was discharged by his client was not permitted to act on the opposite side.[a] With regard to a barrister, it is only required that before taking an adverse retainer, he should permit his clerk to send a note to the solicitor of his original client; and surely in this there can be no degradation, for it is dictated by that sense of honour which, we are persuaded, rules the Bar in general.

It is not unimportant to observe, that the attorneys and solicitors can have no pecuniary interest in the success of these rules. It would probably be pleasant to them to acquire a character for liberality amongst the members of the Bar, by freely paying away their clients' money, but it is manifestly their duty not to add to their client's misfortune, and disburse useless fees, for of all the "glorious uncertainties of the law," the greatest was that of securing, beyond all doubt, the services of an eminent leader under the old practice of retainers.

COMMONS' INCLOSURE AMENDMENT ACT.

This act, the 11 and 12 Vict. c. 99, passed on the 4th September, for the purpose of further extending the provisions of the Act for the Inclosure and Improvement of Commons.

It Recites the 8 and 9 Vict. c. 118; 9 and 10 Vict., c. 70: 10 and 11 Vict., c. 111.

The following enactments it is sufficient to state concisely.

1. That persons not interested in lands to be inclosed may apply to submit land to operation of inclosure.

2. Maps of old inclosed lands may be dispensed with.

3. Allotments of less than five pounds value may be compensated in money.

4. Valuer may set out private and occupation roads for use of lands other than lands to be inclosed,

5. Expenses of maintaining private roads, &c., may be raised by a rate on owners.

6. Rating officer may be appointed for repairing private and common ponds, ditches, &c.

7. Rates to be raised under the direction of a meeting of owners.

8. Money raised for expenses to be paid to Commissioners.

The next two clauses we give fully.

9. That notwithstanding anything in the first-recited Act contained it shall be lawful for the valuer in the matter of any inclosure to receive any claims in writing made by any persons claiming any common or other right or interest in such inclosure, although such claims may not contain the several particulars in respect whereof they are made, nor distinguish the claims in respect of freehold, copyhold, or customary and leasehold property from each other, nor mention therein the places of abode of the respective claimants or their agents; but such claims shall be good and valid if the persons making the same shall state therein that they claim common or other right or interest in the land proposed to be inclosed in respect of the land, premises, or right named in such claims: Provided always, that it shall be lawful for the valuer to require persons delivering any claims to amend the same in such particulars and on such conditions as the said valuer shall think just and reasonable, and no such claims shall be inserted in the statement of claims to be deposited by him under the provisions of the said act until the places of abode of the respective claimants, or their agents, shall have been given in writing in the said claims or indorsed thereon.

10. That where the valuer acting in the matter of any inclosure shall, under the authority and direction of the Commissioners, and in manner provided by the said first-recited act, have ordered all or any part of the rights of sheep-walk, common, or other rights in or over the land to be inclosed, or any part thereof to be extinguished, or the exercise thereof to be suspended, or where such valuer shall have directed any of the allotments to be made in such inclosure to be entered upon by the persons respectively for whom the same shall be intended, if any person shall wilfully or maliciously commit any damage, injury, or spoil to or upon any fences, ditches, or other works made or done for the purposes of such inclosure, or to or upon any such allotment, the person so offending, being convicted thereof before two justices of the peace having jurisdiction in the county or place, shall forfeit and pay such sum of money as shall appear to such justices to be a reasonable compensation for the damage, injury, or spoil so committed, not exceeding the sum of five pounds, and such sum shall be paid to the valuer, to be applied by him in aid of the expenses in such inclosure, or to the person in possession of

[a] *Earl of Cholmondley* v. *Clinton*, 19 Ves. 261.

such allotment, as the Justices may think fit and direct; and the provisions of 7 and 8 Geo. 4, c. 30, concerning the apprehension of offenders and the prosecution of offences punishable on summary conviction under such act, and the form of such conviction, and concerning the cases of a summary conviction under such act, where the sum which shall be forfeited for the amount of the injury done shall not be paid, and all other provisions of such act, consequent upon or in relation to such proceedings and conviction, shall be applicable to the offences under this act, and the prosecution and conviction for the same respectively, save that any matter by the said act directed to be done by the justice shall be done by two justices as aforesaid.

The following are the remaining sections:—

11. Person having taken possession of allotment, may maintain action for damage.

12. On neglect of owner of an allotment to fence, owner of any other allotment prejudiced by his neglect may obtain possession and do the necessary work.

13. Provisions of Inclosure Acts concerning exchanges of land not subject to be inclosed, &c., extended to partition.

14. Provisions of Inclosure Acts applicable to such exchange to apply to partition under this act.

15. In common wood inclosure power to pay value of allotments to Crown in money.

HILARY TERM EXAMINATION.

The Examination of persons applying to be admitted attorneys, will take place on *Tuesday*, the 23rd *January* instant, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, and will commence at 10 o'clock precisely.

The articles of clerkship and assignment, (if any,) with answers to the questions as to due service, according to the regulations approved by the Judges, must be left on or before *Thursday* the 18th instant.

*** Where the articles have not expired, but will expire during the Term, the candidate may be examined conditionally, but the articles must be left within the first seven days of Term, and answers up to that time.

Attention is requested to the following regulation:—

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the Preliminary Questions (No. 1.); and it is expected that he should answer in *three* or more of the heads of inquiry,—*Common Law and Equity* being two thereof.

PERIODICAL LIST OF NEW BOOKS.

Notes on New Statutes.

The Act for promoting the Public Health, with notes, an Analytical Index, and, (by way of appendix) the Nuisances Removal and Diseases Prevention Act, 1848, some additional Forms, and a table of Rates, leviable under the Public Health Act. By Edward Lawes, Esq., Barrister-at-Law. London: Shaw and Sons, Fetter Lane. 1849. Pp. xvi., 330.

A notice of this valuable edition of the Act was given at p. 172, *ante*.

The Public Health Act, 1848; 11 & 12 Vict. c. 63; together with an Analysis of the Act, Forms, &c. By Thomas William Saunders, Esq., of the Middle Temple, Barrister-at-Law. Law Times Office, 29, Essex Street, Strand. 1848. Pp. xii., 244.

The Public Health Act; 11 & 12 Vict. c. 63; and the Nuisances Removal Act, 11 & 12 Vict. c. 123; with Notes and Indexes; being a Companion to the Law of Sewers. By Humphry H. Woolrych, of the Inner Temple, Barrister-at-Law. London: W. Benning. 1849. Pp. xlix., 192.

The Joint-Stock Companies' Winding-up Act, 1848; (11 & 12 Vict., c. 45;) with an Introduction, Notes, and Forms, and some Notes of Cases. By John Malcolm Ludlow, Esq., Barrister-at-Law. London: Stevens and Norton; Hodges and Smith, Dublin. 1849. Pp. lxxxii., 221.

For a notice of this work, see p. 184, *ante*.

Executors and Administrators.

A Treatise on the Law of Executors and Administrators. By Edward Vaughan Williams, of Lincoln's Inn, Barrister-at-Law, (now one of the Judges of her Majesty's Court of Common Pleas). Fourth edition. Two vols. W. Benning and Co. 1849. Pp. cxix., 1785.

The new edition of this standard work by, Mr. Justice Williams, needs no recommendation to secure it the earliest attention.

Landlord and Tenant.

Woodfall's Practical Treatise on the Law of Landlord and Tenant; with a full Collection of Precedents and Forms of Procedure. Entirely re-modelled and greatly enlarged, by S. B. Harrison, Esq. The sixth edition by F. L. Wollaston, Esq., of the Middle Temple, Barrister-at-Law. London: S. Street; A. Maxwell and Son; J. and R. Stevens; and G. S. Norton. 1849. Pp. lxxii., 1064.

Specific performance of Contracts.

A Practical Treatise on the Law relating to the Specific Performance of Contracts. By Edward Batten, Esq., Barrister-at-Law. London: W. Benning and Co. Pp. xliv., 410.

Wills.

Concise Precedents of Wills; with an Introduction and Practical Notes. By James

Traill Christie, Esq., of the Middle Temple, Barrister-at-Law. London: Maxwell and Son; Hodges and Smith, Dublin; T. and T. Clark, Edinburgh. 1849. Pp. xv., 267.

This Collection of Precedents will be very useful to the practitioner in a department of business for which he requires a ready reference on "occasions sudden" and important. The Introduction and Notes are valuable.

Easements.

A Treatise on the Law of Easements. By Charles James Gale, Esq., of the Inner Temple, Barrister-at-Law. The Second Edition. London: S. Sweet; Hodges and Smith, Dublin. 1849. Pp. xix., 467.

Equity Jurisprudence.

A Manual of Equity Jurisprudence as administered in England; founded on Story's Commentaries, and comprising, in a small compass, the points of equity usually occurring in chancery and conveyancing, and in the general practice of a solicitor. By Josiah H. Smith, B. C. L., of Lincoln's Inn, Esq., Barrister-at-Law. Second Edition. London: J. and R. Stevens and G. S. Norton; Hodges and Smith, Dublin. 1849. Pp. xxxii. 352.

Leading Cases.

A Selection of Leading Cases on Various Branches of the Law; with Notes. By John William Smith, Esq., of the Inner Temple, Barrister-at-Law. In two vols. Second edition. By Henry Singer Keating and James Shaw Willes, Esqrs., of the Inner Temple, Barristers-at-Law. London: A Maxwell and Son; T. and T. Clark, Edinburgh; Hodges and Smith, Dublin. 1849. Pp. xlix., 1032.

We hope soon to find an opportunity of noticing the new matter in this much-esteemed work.

Evidence.

A Digest of the Law of Evidence on the Trial of Actions at Nisi Prius. By Henry Roscoe, Esq., of the Inner Temple, Barrister-at-Law. Seventh edition, with considerable additions. By Edward Smirke, Esq., Barrister-at-Law. London: W. Benning and Co. Pp. lxxii., 868.

This seventh edition sustains the reputation of this valuable digest.

Arbitration.

A Treatise on the Power and Duty of an Arbitrator and the Law of Submissions and Awards; with an Appendix of Forms, and of the Statutes relating to Arbitration. By Francis Russell, M.A., Barrister-at-Law. London: W. Benning and Co. 1849. lxxvi., 927.

Bankruptcy and Insolvency.

A Manual of the Law and Practice in Bankruptcy and Insolvency: in Bankruptcy, as administered in the Court and district Courts Bankruptcy; in insolvency, as administered the Insolvent Debtors' Court, and in the County Courts: comprising the alterations effected by recent statutes; with an Appendix of Practical Forms. By John Kendall, Attorney and Solicitor. London: J. Spettigue and Farrance.

Justices of the Peace.

The Magisterial Synopsis: comprising summary convictions, the offences, penalties, &c., and the stages of procedure, tabularly arranged; indictable offences, where each is triable, as to bail, costs, &c.; and all other proceedings before justices out of sessions, adapted throughout to the law as consolidated and enacted by the Administration of Justice (or Jervis's) Acts 11 & 12 Vict., cc. 42, 43, and 44, with Forms, Copious Notes, and Practical observations, &c., &c., &c. By George C. Oke, Assistant Clerk to the Newmarket Benches of Justices, Cambridgeshire, and Suffolk. Second edition, enlarged and improved. London: Butterworth. 1849. Pp. xxvii., 468.

This Synopsis is well arranged, and will be of great use in the execution of the new acts relating to the administration of justice at sessions.

Legal Biography.

The Judges of England; with Sketches of their Lives, and Miscellaneous Notices connected with the Courts at Westminster, from the time of the Conquest. By Edward Foss. Two vols., 8vo. London: Longman and Co. Pp. 994.

Notices of this excellent and interesting work will be found at pp. 66, 166, *ante*.

Trials.

Celebrated Trials connected with the Aristocracy in the Relations of Private Life. By Peter Burke, Esq., of the Inner Temple, Barrister-at-Law. London: W. Benning and Co. Pp. v., 505.

Law of Scotland.

Form of Process in Civil Causes, before the Sheriff Courts of Scotland. By John Maclaurin, W. S., Sheriff-Substitute of Argyllshire. Second edition, enlarged and corrected. Vol. I. Edinburgh, Oliver and Boyd; London, Simpkin, Marshall, and Co. 1848. Pp. xii., 304.

This is a valuable addition to that part of the Law of Scotland which it necessary to be known to the English lawyer.

GRANDEUR OF THE LAW.

WRATISLAW OF RUGBY.

[*Concluded from p.* 167.]

Upon the death of the king, Conrad, his brother, seized the dukedom, but died soon afterwards; whereupon Duke BRETISLAW THE SECOND succeeded, and married Ludgard, of the Palatine house of Bavaria (whose great nephew Leopold the Sixth of Austria, imprisoned King Richard the First on his return

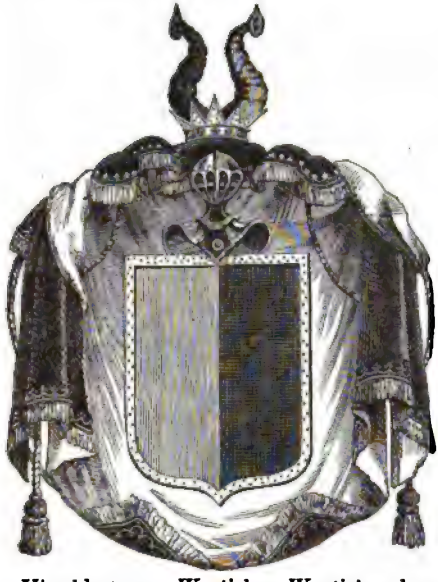
from the Holy Land). The times were then very unquiet, and family dissensions made matters much worse. In 1100 a rebellion took place, and Duke Bretislaw was dethroned and killed, leaving two young princes, Wladislaw and Wlastislaw, who, with their mother, were driven into exile. The youngest son was afterwards taken and killed, but the eldest son escaped into Hungary. He subsequently obtained the protection of the Emperor Henry the Fifth, and the friendship of Pope Pascal the Second. On Duke Bretislaw's death BORIWOY, the eldest son of King Wratislaw by his third wife, obtained the dukedom, and held it for seven years, when he was dethroned by his cousin Swatopluk, the son of his uncle Otto, who however retained it only three years, when WLADISLAW, the second son of King Wratislaw by his third wife, obtained the dukedom, and held it till his death in 1125, leaving two sons, Heinrich and Wladislaw, but they did not succeed their father, as their uncle Sobieslaw seized the dukedom and held it till his death in 1140, leaving two sons, Sobieslaw and Wenzel. The dukedom was then obtained by WLADISLAW, the second son of Wladislaw the First. He received the support of Wratislaus Wratislaw, the grandson of Duke Bretislaw, and by his means, not only retained the dukedom, but also obtained in 1158 the title of king from the Emperor Frederick Barbarossa the First. Wladislaw the Second was twice married: first to Gertrude of Austria, by whom he had one son, Friedrich; and secondly to Judith of Thuringia, by whom he had two sons, Premysl Ottokar the First and Wladislaw Heinrich. Wladislaw the Second died in 1174, and as Wratislaus Wratislaw was also dead, nothing but dissensions took place. Wladislaw's son, FRIEDRICH, succeeded him, but was dethroned by his uncle Sobieslaw the Second, who held the dukedom four years, when Friedrich regained it, and held it till his death in 1189, when his cousin Conrad Otto seized it, and held it till his death in 1191. Then Wenzel, the son of Sobieslaw the First, possessed himself of it for one year, but he was dethroned by HEINRICH BRETISLAW, the grandson of Wladislaw the First, by his first wife, who held it till his death in 1197. Then Wladislaw Heinrich, the son of Wladislaw the Second by his second wife, obtained the throne. He held it but for a short time, when PREMYSL OTTOKAR THE FIRST obtained it, and governed like a prince, subduing all his enemies and extending his dominions, till his death in 1230. He founded the city of Koningsberg on the Pregel, in honour of his regaining the title of king from the Emperor Henry the Sixth in 1198, which title had been lost through these family dissensions. Ottokar the First was a great king, and was succeeded by his son, WENZEL THE FIRST, who married Kunigund of Schwabia, and reigned till 1253, when he was succeeded by his son, the most magnificent prince and the greatest king of his time, PREMYSL OTTOKAR THE SECOND, (surnamed the Great,) who married Kunigund of Bosnia. This king had amongst his retainers, as master of the horse, Count Rudolph of Hapsburg, who was subsequently the founder of the Austrian dynasty. King Ottakar's dominions extended from the confines of Bavaria to Raab in Hungary, and from the Adriatic to the Baltic: he having driven Bela into the limits of his kingdom of Hungary, and conquered Austria, Styria, Carinthia, and Carniola. A few years after Rudolph had left his service, Ottokar consented to his election as king of the Romans, thinking that Rudolph would follow his directions. But Ottokar gave such offence to the Pope, by shewing his sense in not going to the Crusade, that he excommunicated him; and a great many princes, including the King of Hungary, being jealous of Ottokar's power, formed a great league against him, under the direction of Rudolph. The extent of this combination was unknown to Ottokar, and, instead of preparing himself against so many enemies, he sent to Rudolph, inquiring if he had any wages owing to him; and through this negligence he lost his life at the battle of the Marchfield in 1278, which was also disastrous to numbers of the Bohemian nobility, including Zdenko Wratislaw, who was killed by Rudolph himself, whilst defending his kinsman Ottokar. In that battle Wenzel, the son of Ottokar, was taken prisoner. Rudolph appointed Otto of Brandeburg sequestrator of the kingdom. He shewed himself to be a most tyrannical and avaricious rogue. He went at last too far, and Wenzel obtained his release and the restoration of his dominions in 1283.

In 1285, Wenzel married Judith, one of the daughters of Rudolph, which marriage was celebrated in a more magnificent manner than any Europe ever beheld. Wenzel the Second died in 1305, leaving a son, Wenzel, and two daughters, Elizabeth and Anna. Wenzel survived his father only one year, and upon his death, Rudolph the First, of Austria, seized the throne. He however died the following year, when HEINRICH of Carinthia, the husband of Anna the youngest daughter, obtained it, and held it till 1310, when Elizabeth, the eldest sister, and seventh in descent in a direct line from King Wratislaw, married JOHN, Count of LUXEMBURGH, when possession was given to them. King John held it till his death at the battle of Cressy in 1346.

Thus passed the throne of Bohemia out of the house of Wratislaw into that of Luxemburgh, but it may not be out of place here to observe, that Elizabeth's daughter Bona married John, King of France, who was taken prisoner at the battle of Poictiers in 1356, and her grandson Charles, who escaped from that battle, was the first dauphin of France. That her son Charles was the Emperor Charles the Fourth, and her granddaughter Anna the wife of King Richard the Second. All the branches of King Wratislaw's family, a few years after his death, assumed the surname of Wratislaw, in honour of the king; and the collateral branches of this second family, when titles

came in vogue, at the beginning of the fifteenth century, took their title as Counts Wratislaw of Mnesech and Wrani, and became extinct in 1654.

We now return to the head branch of the family of King Wratislaw, and shall notice a few of those who distinguished themselves. *Wladislaw*, the eldest son of Duke Bretislaw, returned into Bohemia in 1114; (having resided with Pope Pascal the Second two years, who presented him with many relics, which are still to be seen in St. George's church at Prague;) he there married Naptha, the heiress of the house of Wartenburg, on which occasion he took the surname of Wratislaw, in honour of his grandfather, and settled the arms as now borne by the family.



His eldest son, *Wratislaus Wratislaw*, born in 1115, was one of the most honourable, prudent, and greatest statesmen of his time. He reconciled all the conflicting claims of the different branches of King Wratislaw's family, he acquired the personal friendship of the Emperor Frederick Barbarossa, and also of the Greek Emperor Manuel, from whom he received many presents. He acquired the title of king for his cousin Wladislaw the Second, as before stated, as well as the grant of the lion with a forked tail, as arms for the kingdom of Bohemia.

The next century beheld this head branch of the family reduced to one person, through the invasion of the Mangols and Tartars. That one, *John Wratislaw*, continued the race under the interesting circumstances detailed in the Bohemian ballad in the library of the Incorporated Law Society. His descendant Zdenko Wratislaw was killed, as before stated, in the battle of the Marchfield, (1278,) by the Emperor Rudolph of Hapsburg. His descendants were highly distinguished. *Mutina* was the bosom friend of his kinsman, the Emperor Charles the Fourth, and accompanied him into Italy; and his brother *Henry* was the emperor's chancellor, and founder and general of the order of the Knights of the Red Cross in the interior of Europe, (a copy of their order-book, recording his death on the 13th of June, 1351, signed and certified by the high master, and sealed with the seal of the order, is at Rugby). Drzelaus Wratislaw visited, in 1465, the holy sepulchre, and published an account of his tour, which is still to be obtained.

At the beginning of this century, only two others of this family remained; *Benitz Wratislaw*, who commanded the emperor's army against the Hussites, and was killed by Ziska, in the battle of the Wissehrad in 1420, when the old family castle was destroyed; and *John Wratislaw*, who possessed large hereditary possessions in Hungary, and was the emperor's field-marshal: he built a castle called Mitrowitza, on the banks of the Saave, and the Emperor Sigismund, as king of Hungary, gave to him the title of "Count Wratislaw of Mitrowitz," which is the family designation at this day. The count had thirteen sons: twelve of whom accompanied him in the war against Sultan Amurath the Second. He made a truce with Amurath, which was scandalously broken by Wladislas, king of Poland, and the Pope's legate, and the battle of Varna was fought in 1444, in defiance of the count's solemn protest. The count and his twelve sons were there slain, as well as the king and the legate. The count's family possessions soon afterwards became the property of the Turks. The youngest son continued the race, and became Burgrave of Prague.

At the beginning of the sixteenth century this family was again reduced to one person, (viz.) *Wensel Wratislaw*, who died in 1554, leaving, by his wife Barbara Wembursky, of Rohatacz, seven sons, amongst whom and their descendants there have been seven stadholders of Bohemia, three burgraves of Prague, four grand priors of the Maltese order of Red Cross Knights,—one of whom, Count *Adam Wratislaw*, commanded their entire armada against the Turks; one grand prior of the Knights of St. John of Jerusalem, several generals and field-marshals, one archbishop, and several bishops, six chancellors,—one of whom built the beautiful Bohemian Chancery at Vienna; eleven judges, seven chancellors of the exchequer, and four ambassadors,—one of them, Count *John Wenzel Wratislaw*, was connected with English history, having been ambassador plenipotentiary to King William the Third and to Queen Anne. The Duke of Marlborough, in his letter to the Earl of Nottingham, as Foreign-Secretary, dated 31st August, 1702, thus mentions him: "The pensioner is of opinion that if we should send 10,000 men as far as Treves, it would be a very great hindrance to our taking the field next campaign before the French; so that if you please to see what answer *Count Wratislaw* can give towards obviating that objection, I desire you would not name the pensioner to him, nor that this objection comes from me; for in his nature he is

very positive, and not well pleased with such as differ with him." The count made himself very acceptable in England, and the Duke of Marlborough became his personal friend. On the 9th of June, 1704, he introduced his friend, Prince Eugene, to the duke, and they dined together, and settled the future campaign. This Count John Wenzel Wratislaw, by grant from the Emperor Joseph the First, settled, by will, his estates into a family *fidei comis*. This will he made himself, not forgetting however his friend, Prince Eugene, to whom he left two Indian writing tables, and afterwards he added a codicil, to explain his will, which made confusion worse confounded. The consequence has been, very heavy family law suits and unpleasantness. The first law suit continued eight years, and the last six years.

The entire family are now reduced to the descendants of the third and fourth sons of Wenzel, who died in 1554; the descendants of the other sons having become extinct. The Rugby family are descended from *Stephen*, the fourth son, who died in 1577, leaving four sons. The eldest son, Wenzel, although very young, accompanied the special embassy, sent in 1591 by the Emperor Rudolph the Second to Sultan Amurath the Third. After they had remained nearly two years at Constantinople, the sultan declared war against the emperor, destroyed the ambassador, and put all the members of the embassy into slavery. Wenzel was a slave for two years, and underwent most terrible hardships, but at length obtained his liberty; and he published a full account of the embassy and of his captivity, which was republished at Leipzig in 1786, and is at Rugby. He left a large family; his second son was *Adam Leopold*, who died in 1668, leaving a son, *Wenzel Ignatius*, who was a very celebrated man in his day. He was appointed to settle the boundaries between Bohemia, Bavaria, and the Palatinate, which he satisfactorily finished in 1709. He was renowned for his historical erudition and great science, and died in 1727, leaving two sons, *Francis Charles* and *Wratislaw Maximilian*, and two daughters. Francis Charles was another of the ambassadors above referred to, and is thus described in Baron de Pollnitz's Memoirs of the Court of Saxony, republished in 1745: "Francis Charles, Count de Wratislaw, one of the emperor's privy council, and knight of the orders of Russia and Poland, resides at this court in quality of ambassador from his imperial and catholic Majesty. *He is descended from one of the greatest families in the kingdom of Bohemia*, and a family which has given wise ministers to the august house of Austria. This gentleman has been for a long time in the management of the most important offices; he was ambassador for the kingdom of Bohemia to the dyet of the empire at Ratisbon; from thence he went in the same character to Poland, where he was present at the dyet of Grodno. The emperor afterwards named him grand master of the household to the princess royal and electoral, now Queen of Poland. The count having worthily acquitted himself of that office, was for several years ambassador at Russia, where he concluded the happy alliance subsisting between the two empires, and acquired the esteem of the empress, who honoured him with her order of St. Andrew; Augustus II. having before given him that of the White Eagle. This minister since his return from Muscovy has moreover been charged by the emperor with important commissions to the courts of Prussia, Brunswick, and Holstein. At length he is come back again to this court as ambassador from his imperial and catholic Majesty, and officiates also as great master of the queen's household. This nobleman is of a middling stature, of a happy physiognomy, is civil, beneficent, and loves grandeur and pleasures, but does not abandon himself to them, so far as to neglect the interests of his master, whose affairs he negociates with a noble candour, which has rendered him as much esteemed at the courts where he has resided as he is beloved for his affability and politeness. His wife is the Countess of Kinski, whose father was great chancellor of Bohemia, under the Emperor Leopold, and whose brother is now in that office under the most august Charles VI."

He died in 1750 without issue. He was known throughout Europe as the best-living man in it. He never travelled without two cooks being a day's journey in advance, for preparing the viands for his own personal cooks to finish the next day for his dinner. The family being hereditary masters of the royal kitchen in Bohemia, may have contributed to his being so well known for his good living. This office at the coronation of the late emperor was filled by General Count Eugene Wratislaw, his aide-de-camp general, in consequence of the minority of the head of the family. Wratislaw Maximilian Wratislaw, the other son, was for many years the governor of Teschen in Silesia, which governorship included a considerable part of Moravia. He married Josepha, Countess of Kunitz de Weissenbourg, and died in 1741, leaving two sons and two daughters. The eldest son, Charles Francis de Paula Adam, died in 1788, without issue.

The other son was Marc Count Wratislaw, born 9th November, 1735. He came to England in 1770, and married in 1773. His wife died at Rugby in 1779, leaving one son, who served his articles with Mr. Gotobed, the well-known solicitor to the Bedford family. In 1797 he went to the West Indies, where he died. The count married again in 1784, and died at Rugby in 1796, leaving by his second marriage, four sons and four daughters. The eldest son, JOHN THEODORE, was well known to the profession under the firm of "Dawson and Wratislaw," in Saville Place. He died in 1816, leaving, by different wives, a son and a daughter, who are still living. The second son, the Reverend *Albert Joseph Wratislaw*, A.B., was one of the masters at Rugby School, and died, unmarried, in 1810. The youngest son, George Galbraith Wratislaw, A.M., was

Fellow of Magdalen College, Oxford; and died, unmarried, in 1819. The third son, WILLIAM FERDINAND WRATISLAW, is the author of this memoir. He was admitted on the roll of Attorneys-at-Law, in Michaelmas Term, 1810, and is still in practice at Rugby. He has five sons and five daughters; the second son was admitted in Michaelmas Term, 1846, and the fourth son is intended for the profession. The eldest son is a Fellow and Tutor of Christ's College, Cambridge. The third son is a student at St. George's Hospital: and the youngest son is a midshipman in her Majesty's navy. The whole family abroad consist at this time of nine males only, three of whom are with the army in Italy. The head of the family and possessor of the *fidei comis* estates is Count FRANCIS ADAM WRATISLAW, of Dirna Castle, Bohemia. He is descended from Sebastian, the third son of Wenzel, the last common ancestor, and is ninth in descent from him. He is first cousin to the Princes Leiningen. The senior of the family is the author of this memoir, who is seventh in descent from the above Wenzel. The family titles are Count Wratislaw, of Mitrowitz, granted by the Emperor Sigismund, (grandson of Elizabeth Wratislaw and John of Luxemburgh,) Count and Baron of the old Baronage of Bohemia, and Count and Baron of the old Baronage of the Holy Roman Empire, granted by the Emperors Ferdinand the Second, Ferdinand the Third, Leopold the First, and Joseph the First.

The predicate of high and well-born was granted to the family by the Emperors Leopold the First and Joseph the First, with other privileges and honours.

The family are described in the letters patent of Ferdinand the Second and Ferdinand the Third, as descended from "an illustrious, utmost old, noble stock and line, who in our kingdom of Bohemia for many centuries and since immemorial times belonged to the knighthood and nobility, and who in the wars against the hereditary enemy of Christianism, showed in the highest perils heroic courage, and not troubled valour."

In the letters patent of the Emperors Leopold the First and Joseph the First, they are thus described:—"Considering the high ancientness and the old glory of the Lords and Counts Wratislaw, of Mitrowitz,—considering all the important services and merits, rendered for many centuries by the ancestors of this family to our most glorious ancestors, the Roman Emperors and Kings of Bohemia, and to our high honourable Archducal House of Austria, as well in the hereditary Kingdom of Bohemia, as in the other Provinces incorporate to our Empire,—considering the high offices and commandments invested by different members of this family; but considering, especially, the services rendered by them, on sea and land, against the hereditary enemy of the Christian name, as Grand Priors, Grand Ballies, and Commondatores of the Christian ships at Malta, and as Land Commanders against the Saracens," &c., &c.

NOTES OF THE WEEK.

APPOINTMENT OF QUEEN'S COUNSEL.

We understand that the applications to the Lord Chancellor, from gentlemen practising both in the Courts of Law and Equity, for promotion to the rank of Queen's Counsel, have been unusually numerous during the late short vacation. We are not yet in a position to state exactly to what extent those applications have been successful. It is confidently stated, however, that three or four members of the Chancery Bar, and at least as many practising in the Common Law Courts, will speedily obtain the privilege of wearing silk gowns.

COMMENCEMENT OF HILARY TERM.

The Judges took their seats in Court on Thursday last, at the usual hour, and proceeded to business without any formalities; the reception of the judges and heads of the Bar by the Lord Chancellor, and the subsequent procession at Westminster Hall, being, by the modern arrangement, dispensed with in Hilary and Trinity Terms, and confined to the commencement of those Terms which follow the Spring and Autumn Circuits.

HILARY TERM EXAMINATION.

The number of notices for admission on the Roll in this term, including those under Judge's Orders, amounts to no less than . . . 206

Of these candidates a large proportion have been already examined in the last or preceding terms, namely 86

Leaving to be examined on the 23rd inst. 120

Supposing that the usual average should fail to attend or complete their testimonials, the accession to the ranks of the profession will be reduced to about 100.

SALARIES OF THE COUNTY COURT OFFICERS.

We believe that no arrangement has yet been made, fixing the salaries of the Clerks and other Officers of the County Courts. Until an Order in Council is made, under the 9 & 10 Vict. c. 95, those officers will continue to be paid by fees, the scale of which is framed so liberally as regards the officers, that the Clerks, in some instances, receive a larger amount of remuneration than the Judges, whose salaries were settled by an Order of the 11th August last, at 1,000*l.* per annum. The continuance

of th anomalous state of things renders it proble that the whole subject of the County Cour is under the consideration of the goverment, and that some changes are about to be introduced requiring the sanction of Parliament.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Nov. 21st, to Dec. 22nd, 1848, both inclusive, with dates when gazetted.

Barneby, Thomas, and George Wheeler Bentley, Worcester, Attorneys and Solicitors. Dec. 12.

Burchell, William, George Alexander Kilgour, and John Parson, 47, Parliament Street, Westminster, Attorneys and Solicitors, so far as regards the said George Alexander Kilgour. Dec. 22.

Edwards, Samuel, William Edwards, and Francis Thomas Selby, Spalding, Attorneys Solicitors, and Conveyancers, so far as regards the said William Edwards. Dec. 5.

Handley, Charles, and Thomas Hurlston Kirby, Warwick, Attorneys and Solicitors. Dec. 22.

Horner, Robert Ryder, and Clement Harvey, Gloucester, Attorneys and Solicitors. Dec. 5.

Hughes, Henry, Henry Spence Fairfoot, and Henry Webb, Clement's Inn, Attorneys and Solicitors, so far as regards the said Henry Hughes. Dec. 22.

Pocock, George Pearce, and Thomas Marston, 10, Norfolk Street, Strand, Attorneys and Solicitors. Nov. 28.

Rice, Henry, and James Alfred Pittis, Newport, Isle of Wight, Attorneys, Solicitors, and Conveyancers. Nov. 24.

Roche, Charles Bennett, and Francis Carter, Daventry, Attorneys and Solicitors. Nov. 24.

Shepherd, Julius Gaborian, and James Tassell, Faversham, Attorneys, Solicitors, and Conveyancers. Dec. 1.

MASTERS EXTRAORDINARY IN CHANCERY.

From Nov. 21st, to Dec. 22nd, 1848, both inclusive, with dates when gazetted.

Bagshaw, Thomas Pittard, Manchester. Dec. 22.

Browett, Thomas, Coventry. Nov. 21.

Gooding, Edward Bryant, Bridgwater. Dec. 1.

Guy, John Pattinson, York. Dec. 8.

Jones, John, Liverpool. Nov. 24.

Lea, John Wildman Thomas, Bewdley. Nov. 21.

Phillips, John William, Haverfordwest. Nov. 28.

Shaw, John, Tamworth. Nov. 24.

Ward, Frank Cavendish, Prescott. Dec. 22.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Jackson v. *North Wales Railway Company.* 13 Dec., 1848.

A contract with a railway company, unless executed according to the act of parliament, cannot be enforced: it is not sufficient that the company have acted as if there was a contract.

To found a claim upon an alleged trust the nature of the trust must be stated.

This railway company had issued an advertisement for tenders for certain works. The plaintiff's tender was accepted, and he proceeded to make preparations for laying down the rails, although no contract had been formally subscribed according to the regulations of the act. It was also alleged by the plaintiff that a sum of money had been placed apart to meet the outlay in making the railway, and of this fund the bill stated the defendants to be trustees. A demurrer was filed for want of equity, which Vice-Chancellor Knight Bruce overruled, the allegation of trust being sufficient to sustain the bill. On an appeal from that decision,

Bacon and *J. H. Palmer* appeared for the appellants.

J. Russell and *Giffard* for the respondents.

The *Lord Chancellor* held, that no contract whatever had been shown to exist between the parties, for all contracts with the company required to be perfected in a certain form in order to make them binding. Then it was alleged that the defendants had so acted as to induce the plaintiff to suppose that the contract was complete. That was precisely the case of *Kirk* v. *The Bromley Union*, 17 Law J. 127: a Court of Equity could not enforce the performance of a contract which did not exist in law, merely because the parties had acted as if the contract were in existence. If that were so, the Court might be called upon to enforce any parol agreement, contrary to the express enactment of the Statute of Frauds. With respect to the question of trust, it was not sufficient that the bill alleged its existence; the Court required to be informed of the nature of the trust in order to determine whether it ought to be enforced.

Demurrer allowed.

Tulk v. *Moxhay.* Dec. 22, 1848.

COVENANT AGAINST BUILDING.—INJUNCTION.

A covenant to keep an inclosure as a garden for the inhabitants of a square, is binding upon subsequent purchasers.

In 1808, Mr. Tulk sold the fee simple of the area in Leicester Square, to Mr. Elmes, subject to a covenant, that the inclosure should always remain as a garden or pleasure-ground for the inhabitants of the square. The Master of the Rolls granted an injunction to restrain the defendant from building on the inclosed area; against which decision an appeal was made.

R. Palmer appeared for the appellant; *Rolt*, for the respondent.

The *Lord Chancellor* affirmed the Master of Rolls' decision, and dismissed the appeal with costs, and said, that the original purchase deed of 1808, contained a covenant that subjected the property to an equity, which the purchaser had accepted; and this equity applied in full force to every subsequent purchaser with notice,—the vendee consequently paying a reduced price.

Vice-Chancellor of England.

The Duke of Leeds v. *Lord Amherst.* Nov. 25, 1848.

RE-EXAMINATION OF WITNESS.

Statements were contained in a bill, and a witness had given his evidence generally as to certain acts of waste having been committed in and after the year 1809: Held, *that the witness might be re-examined particularly as to the fact of the same acts of waste having been committed previously to* 1809.

A decree had been made in this cause, directing a reference to the Master for an account of the sums received by the testator, (the Duke of Leeds,) or by any person by his order, from the sale of the materials of Kiveton Hall, in Shropshire, and what trees were cut down by the testator. A witness (Mawe) had been examined in the cause, and deposed, "that in or about the year 1809, Kiveton Hall was pulled down by the Duke of Leeds, and that in consequence the ornamental timber in and about it was cut down. Mawe, since then, had discovered that the Hall was pulled down in 1800, and that the timber was cut down before 1809. A motion was now made by the plaintiff, that he might be at liberty to re-examine Mawe before the Master, The Master had proceeded to take an account prior to the year 1809, and his certificate had been on that account opposed, but unsuccessfully, by the defendants.

Mr. *Bethell* and Mr. *Lloyd* appeared on the motion.

Mr. *J. Parker* and Mr. *L. Russell* opposed it on the general ground, that a witness cannot be re-examined on a point on which he has already given evidence, citing *Rowley* v. *Adams*, 1 Myl. & K. 543.

The *Vice-Chancellor* said, the decree was in such a form as to permit the account to be taken from the first time when the demolition took place, and it appeared to him that that was the form of the decree, the Master was at liberty to select as a period to commence the account any period, however early, which might have expired, notwithstanding what had been mentioned in the bill. Then supposing that to be right, the substantial object in the case was to have Mawe re-examined with respect to certain facts which took place antecedent to 1809. The case was analogous to one like this:—A bill might be filed by *A.* against *B.* for an account of dealings, and a case of no dealings might be set up, if the general evidence of dealing is gone into, and the general case of dealing is made out, the Court takes for granted that the general case for account is made out, and the particulars would be left for inquiry. On the footing of a general decree, therefore, in the present case, an inquiry as to particulars was wanted about which no discussion had taken place, and he thought the witness should be examined. Order granted in the terms of the notice of motion.

Cunningham v. *Antrobus.* Dec. 21, 1848.

MARRIAGE SETTLEMENT.—HUSBAND AND WIFE.—REDUCTION INTO POSSESSION.

Under a marriage settlement, executed by an infant, a sum of 1,000*l. was to be transferred on the infant attaining* 21, *and at her request from the trustees holding the same, to the trustees of the settlement.*

Held, *that the transfer thereof during the husband's life, about the time of her attaining* 21, *amounted to a reduction into possession.*

The plaintiff, whose maiden name was Ann Harvey, married at 17 years of age a gentleman named Cunningham. By her marriage settlement a sum of 2,000*l.*, which was vested in trustees upon trust, to pay the interest to Ann Harvey until marriage, and afterwards to her father for life, and to be transferred at his decease to her absolutely,—and a further sum of 1,000*l.*, to which she was entitled under the will of Lady Barnard,—were settled upon Mrs. Cunningham and her husband for life, with remainder over to their issue, to be vested when they attained the age of 21 years. In the settlement there was a covenant by Mrs. Cunningham, that on attaining her majority she would transfer the latter sum to trustees; but the trustees under the will, without her request, transferred the 1,000*l.* to the trustees under the settlement, about the time when she attained 21 years. The husband died, leaving as issue of the marriage one child.

J. Parker and *Elderton*, appeared for the plaintiff; *Welford, Bethell, Elmsley*, contrà.

The *Vice-Chancellor* held, that the sum so transferred by the trustees amounted to a reduction into possession, and that as the 2,000*l.* could not have been reduced into possession by the husband during her life, the remainder of the fund had not been affected.

Vice-Chancellor Knight Bruce.

In re Marylebone Joint-Stock Banking Company, Exparte Troutbeck; Ibid, exparte Walker. Dec. 16, 1848.

JOINT-STOCK COMPANIES' WINDING-UP ACT.—11 & 12 VICT. C. 45.

By the 7th head of sect. 5, contributories may petition for winding-up the company where business is only carried on for the purpose of winding-up its affairs, and the same is not completely wound up, although there be no outstanding debts to strangers.

An action, suit, or other proceeding pending at the date of the petition, is no objection to an order of reference under the act.

Eliza Troutbeck, as executrix of George Troutbeck, who died in June, 1848, and held 10 shares in the banking company, presented this petition for the winding-up and dissolution of the bank. Troutbeck, in April, 1841, sold his shares to M'Lean, one of the directors, and duly executed the deed of transfer on the 30th, but on his attending in the June after, at the office of the company's solicitors, he ascertained that he was still liable, as the transfer had not been duly completed. The London and Westminster Bank advanced 20,000*l.* on bills at six months, and received as collateral securities, four notes of 5,000*l.* each, signed by four directors and shareholders. The bank not having paid, the bills were taken up by Walker, one of the signing directors, and Troutbeck had to pay the sum of 3,214*l.* for principal, exclusively of monies paid for interest, forbearance, and costs.

Edmund Walker presented a similar petition, which was supported by an affidavit, stating, that he had been called upon by creditors to pay, and had paid monies exceeding his proportion, in respect of the shares belonging to him.

Bacon, Lloyd, Hetherington, and *Cole,* appeared for the petitioners; *Glasse,* contrà, on behalf of the plaintiffs in the suit of *Deekes* v. *Stanhope,* (14 Sim. 57,) in which the petitioner was a defendant.

The *Vice-Chancellor* directed an order of reference on both the petitions,—the act giving parties, by the 7th head of the 5th section, a right to petition, and by the 58th section, providing, that the rights of creditors and existing contracts, *or any actions, suits,* &c., pending at the date of the petition, shall not be affected.

The order was affirmed on appeal the 16th Dec.

In re Wheal Lovell Mining Company, Exparte Wild. Dec. 15, 1848.

WINDING-UP MINING COMPANY.

Mining companies on the cost book principle are included in the 2nd section of the Joint-Stock Companies Winding-up Act, (11 & 12 ***Vict. c.*** 45.)

Mr. Wyld had subscribed for five shares in the mining company, which was originated in 1845, for the purpose of working the Wendron Tin Mines. The shareholders entered their names in a register, called the cost book, whereby they became contributories. The expenses of the company exceeded the receipts, and the petitioner desired to withdraw, but the treasurer of the company objected to his so doing, unless on payment of his contributions for costs, &c. An action was afterwards brought for 161*l.* 2*s.* 8*d.* against the petitioner in the Court of Exchequer, on which a verdict was given for the amount. Mr. Wyld then served the treasurer personally with notice that a petition would be presented for the dissolution and winding-up of the concern, under the 5th head of section 5 of the Joint-Stock Companies Winding-up Act (11 & 12 Vict. c. 45), which enacts, "that if any action shall have been brought in any of her Majesty's Courts of Record, against any contributory of a company, for any debt or demand which shall be due or claimed to be due from or by such company, and such company shall not, within 10 days after notice in writing by such contributories of such action shall have been served upon the company, in manner hereinbefore directed with respect to any judgment-debt, have paid, secured, or compounded for such debt or demand, or have otherwise procured such action to be stayed, or shall not have indemnified the defendant to his satisfaction against such action, and all costs, damages, and expenses to be incurred by him by reason of the same."

Bacon and *J. H. Palmer* appeared for the petitioner; *Wigram* and *Follett* for the mining company.

The *Vice-Chancellor* held, that mining-companies on the cost-book principle were included in the 2nd section of the act, and were specially excepted from the Joint-Stock Companies Winding-up Act, (7 & 8 Vict. c. 111,) by the 63rd section; and his Honour ordered, that if the requisites of the 5th head of the 5th section of the act were not complied with, within a time stated, the company should be dissolved and wound-up under the act.

In re Trinity Church, St. Andrew's, Holborn. Dec. 22, 1848.

APPLICATION OF RENTS OF PARISH ESTATES.

IN this case it was declared that the net rents and profits of the parish estates of St. Andrew were applicable, in the first place, to repair the church, including the chancel; in the second place, to provide for the rector a fit and proper place of abode; and lastly, to be apportioned between that part of St. Andrew's parish as was not included in the districts of Trinity and St. Peter's chapels, in accordance with the 8 & 9 Vict. c. 70, (the Church Building Acts Amendment Act); and, subject thereto, it was referred to the Master to draw up a scheme for the application of the rents

and profits of the estates, with liberty to state special circumstances.

Swanston, *Wigram*, and *Fooks* appeared for the trustees; *Russell* and *J. B. Allen* for the trustees; and *Bacon* and *Roundell Palmer* for the rector.

Vice-Chancellor Wigram.

East and West India Dock Company v. *Littledale*. Dec. 5, 1848.

INTERPLEADER.—INJUNCTION.

Course of proceeding where foreign claimants require time to answer before issue to try the rights of the parties.

THIS was an interpleader suit. Messrs. Littledale, the consignees, and certain Parsee merchants at Bombay, each claimed the cargo. Messrs. Littledale put in their answer to the bill, and moved to dissolve the injunction; and the Parsee merchants appeared by counsel, but insisted on their right to place their case upon record by an answer, before putting the respective rights in course of trial. The motion was ordered to stand over in order that the answer of the Parsee merchants might be put in. No answer had been filed, but they offered to answer without oath or signature. Upon the renewal of the motion by Messrs. Littledale to dissolve the injunction restraining them from proceeding by action against the Dock Company for the delivery of the cargo,

The *Vice-Chancellor* said, the course of proceeding in practice had always been for the respective claimants in interpleader to come in upon motion to dissolve the injunction and state their respective cases, and to obtain the opinion of the Court as to the proper mode of trying the question between the parties. In no instance had an interpleader bill been brought to a hearing. But here the Parsee merchants insisted on their right to file their answer, and to have the cause prosecuted against them in the usual manner. The question was, what order was the Court to make? He assumed for the present that the plaintiff had a right to have this considered *primâ facie* as an interpleader suit. That privilege imposed the obligation to prosecute the suit with diligence. He could not say that the plaintiff had in this case forfeited his privilege by want of diligence. Messrs. Littledale retained their power of urging on their co-defendants by acting against the plaintiffs themselves if they did not proceed. If any injury should accrue to the Littledales in consequence, it was an evil incident to the privilege of the plaintiff, in interpleader cases, to be protected against double vexation, and he could not avoid it. No inconvenience, however, could arise in this case, beyond what had already occurred. The answer being due, the bill would be taken *pro confesso*, unless the Parsee merchants obtained their order to extend the time for filing the answer; and when they applied for that order, they would have to satisfy the Court that the issue in interpleader could not, without injustice to themselves and the Littledales, be put into an immediate train of settlement. The motion would, therefore, stand over, and the Messrs. Littledale might again apply to dissolve the injunction.

Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

Peat v. *Mangnall*. Nov. 22 and 25, 1848.

STAY OF PROCEEDINGS.—COSTS.

The plaintiff in an action for a breach of contract obtained a verdict with damages, whereupon the defendant obtained a rule nisi *to stay all further proceedings on payment of the damages and costs:* Held, *that although the application was a reasonable one, yet as it was resisted, that the rule must be discharged, there being no precedent for it; but, as it was a reasonable application, without costs.*

THIS was a rule calling on the plaintiff to show cause why the proceedings in this case should not be stayed, upon payment of the amount of the verdict, and the costs when taxed.

In this case an action had been brought against the defendant for a breach of contract. The defendant pleaded a number of pleas, upon which issue was joined. At the trial all the issues were found for the plaintiff, damages 8*l*. The present rule having been obtained,

Atherton now showed cause, and contended, that this was quite a novel application, and one for which there was no precedent. The only reason which had been urged in its favour when the rule was moved for was, that it might save a few shillings costs, but the expenses of obtaining this rule would make the costs larger instead of smaller. The object of the defendant, no doubt, was to prevent a regular judgment being recorded against him; but it was submitted that the plaintiff was intitled to a regular judgment, which might be very important for him in case a cross-action should be brought by the defendant on the contract, for distinct issues have been raised and decided in this case, and the present plaintiff could plead the judgment which he has recovered in this action. The effect of this motion too has been to stay the plaintiff in obtaining the fruits of his verdict; he cited *Fisher* v. *Pyne*, 1 M. & G. 265, in which an order to stay proceedings on payment of damages and costs, was refused.

Cowling, in support of the rule, contended, that what was prayed was very reasonable, and that if the plaintiff got the amount of his verdict and costs, it was all he ought to require, and that the defendant ought not to be put to the expense of entering up judgment on the record and satisfaction thereon. If any action were at any time brought by the now defendant in respect of the contract, and the judgment in the present action were of importance to the now plaintiff, it would then be time enough for him to move to have the record perfected

and judgment entered up at the now defendant's expense. He also contended that the present application was quite as reasonable as one to pay money into court. The first case in which that was done is *Giles* v. *Harvey*, 1 Lord Raymond, 255; and in that case the same argument was raised which is now used by the other side.

Patteson, J. The application seems reasonable, but as it is opposed, I must inquire into the practice.

Cur. adv. vult.

Patteson, J. In the case of *Peat* v. *Mangnall* it struck me that the application was reasonable, but on inquiry, I find that there is no precedent for it either in Court or at Chambers, and I am unwilling to introduce a new practice. I certainly do not think that the defendant is entitled to much favour, as he put a number of pleas upon the record which were veratious and were all found for the plaintiff. As I am adverse to introducing a new practice upon the subject, and as the motion is resisted, the rule must be discharged; but as I think the application was a reasonable one, and I do not see any reason for the plaintiff resisting it, it must be discharged without costs.

Rule discharged without costs.

Nisi Prius.

(*Coram*, Lord Denman, C. J.)

Dawson and others v. *Hay*. 20th Dec., 1848.

LIABILITY OF PROVISIONAL COMMITTEEMAN. — EVIDENCE OF AUTHORITY TO AGENT.

In an action by advertising agents in Cannon Street, against a member of the provisional committee of the Leicester and Shrewsbury Direct Railway Company, it appeared that the order for advertisements was given by the secretary of the company, but that after the scheme was abandoned, the defendant attended a meeting for the purpose of ascertaining the liabilities of the company, at which the plaintiff's claim was mentioned, and the defendant said, "We are all in, and must get out of it as well as we can." It was also proved, that the defendant had subsequently subscribed 63*l*., as his proportion of the expenses of the company. The learned judge left it to the jury to say, whether the defendant acted in such a manner as to induce reasonable men to believe he had authorized the secretary to give orders to the plaintiffs. His conduct in admitting the plaintiff's claim after the scheme was abandoned, admitted of three different constructions. First, he might have mistaken the law, and fancied that he was liable when he was not; or, secondly, (whether knowing of his liability or not,) he might be willing rather to pay the money than to come into Court and defend an action; or, thirdly, he might admit his liability, and afterwards pay the 63*l*., from a consciousness that he had in fact authorized the secretary to pledge his credit to the plaintiffs. It was for the jury to say in what light they viewed the defendant's conduct, and give their verdict accordingly.

The jury returned a verdict for the plaintiffs for the full amount claimed.

(*Coram*, Pollock, C. B.)

Gillard v. *The Lancashire and Yorkshire Railway Company*. Dec. 21, 1848.

CONSTRUCTION OF LORD CAMPBELL'S ACT.

In an action by a widow, (under the 9 & 10 Vict. c. 93,) for damages occasioned by the death of her husband, Held, *that the plaintiff was only entitled to recover for the pecuniary damage sustained, and not for the loss of her husband's society or protection.*

A PERSON named Gillard, the son of a gentleman of fortune in Devonshire, who had married against the wish of his father, and subsequently engaged in the service of the Electric Telegraph Company, at a salary of a pound a week, was accidentally killed, whilst travelling on the defendants' railway, on the 16th September, 1847, the accident being said to have been caused by the negligence of the Railway servants. The widow afterwards brought this action to recover compensation in damages for her loss. In dealing with the question of damages,

The *Chief Baron* remarked, that it must be remembered the act 9 & 10 Vict. c. 93, was passed to remove the anomaly in the law which allowed a man, who survived an injury inflicted on him by the negligence of others, to sue for compensation for that injury, but conferred no right of action on his family and representatives, if he should be killed. This new action should be confined strictly to the words of the statute, which did not create any new ground of action. A man, if injured, could only sue for the pecuniary loss sustained by him, and, if he died, his representatives could do no more, under Lord Campbell's Act. If a different view were to be acted upon, it would be difficult to place any bounds on the amount of compensation to which the family of a person killed by the negligence of another might be be entitled. There could be no measure of the "sentimental" part of the loss consequent on the death of a beloved wife, parent, or child. The damages must, therefore, be measured altogether by the pecuniary loss actually sustained and proved. Here the plaintiff's husband was enjoying an income of 52*l*. a-year, and as she sued for herself alone, and not for her children, the jury would say with what sum they would compensate her, individually, for the deprivation of so much of that income as fell to her share during her husband's life. That was his construction of the act, and he stated it in such a manner as to admit of no doubt, in order that it might be questioned by a Court of Error, if that course should be deemed expedient.

The jury returned a verdict for the plaintiff, damages 750*l*.

BUSINESS OF THE COURTS.

CHANCERY CAUSE LISTS.

Lord Chancellor.

Hilary Term, 1849.

APPEALS.

S. O. Hodgkinson / Ditto — Hodgkinson / Jackson — appeal
Allfrey — Allfrey, — ditto
Stewart — Forbes, — appeal and petn.
Davis — Chanter, 9 causes — appeal
S. O. Cochrane / Lord — Cochrane / Colvin — ditto
To fix a day, The Mayor, &c., Rochester — Lee, ditto and motion
Attorney-General — Wilson — appeal
Fyson — Pole — ditto
Davis — Kingsford — ditto
Lord Brooke — Earl of Warwick — ditto
Battershall / Follett / Battershall — Bp. of Winchester / Ditto / Ditto — ditto
Penny — Watts — ditto

Master of the Rolls.

Hilary Term, 1849.

JUDGMENTS (*reserved.*)

Smith *v.* Earl of Effingham, as to costs.
Norfolk Railway Company *v.* Wodehouse, cause.

PLEAS AND DEMURRERS.

Stand over, Dean of Ely *v.* Gayford, six pleas.
S. O. until hearing, Lewis *v.* Baldwin, on defendant's objection for want of parties.
Mitchell *v.* Kœcher, dem.

CAUSES.

Part heard, *Easter Tm.* Churchman *v.* Capon, Same *v.* Same, — fur. dirs. and costs.
To present petition, Stourton *v.* Jerningham.
Hooper *v.* Denoon.
Williamson *v.* Gordon.
Part heard, *S. O. till petn. of rehearing disposed of* Hemming *v.* Archer, Same *v.* Same, Same *v.* Same, Same *v.* Same, Raworth *v.* Same, — fur. dirs. and costs.
Part heard. Hooper *v.* Salman. Tugwell *v.* Hooper.
M'Michael *v.* Kipling, exons. and petition.
Part heard E.T. Hemming *v.* Archer, Same *v.* Same, Same *v.* Same, Same *v.* Same, Raworth *v.* Archer, — Re-hearing.
Gas Light and Coke Com. *v.* Symonds; Symonds *v.* Gas Light and Coke Com.; Stillman *v.* Gas Light and Coke Com. — fur. dirs. and costs.
After Term, Christy *v.* Courtenay.
S. O. to amend. Baynton *v.* Hooper. Same *v.* Same.
S. O., Wilson *v.* Eden, fur. dirs. and costs.
Bennett *v.* Cooper, ditto.
After Term, Biggs *v.* Naylor.
After Term, Fox *v.* Roberts. Same *v.* Same.
Easter Tm., Attorney-Gen. *v.* Brook, re-hearing.
Smith *v.* Oliver, Same *v.* Same, — fur. dirs. and costs.
Sanderson *v.* The Cockermouth and Wokington Railway Company.
Dibbs *v.* Goren, Same *v.* Dibbs, — fur. dirs. and costs.
Johnson *v.* Thomas.
Rouse *v.* Rouse, fur. dirs. and costs and petition.
Wood *v.* Wood, Same *v.* Same, — exceptions, fur. dirs. & costs.
Brandling *v.* Humble, Same *v.* Same, Same *v.* Same, — fur. dirs. and costs.
Fyson *v.* Whitmore.
Bradstock *v.* Lediard.
Newman *v.* Harrison, fur. dirs. and costs.
Hele *v.* Bexley, Same *v.* Same, Same *v.* Same, Same *v.* Bowyer, Same *v.* Donovan, — exons. fur. dirs. and costs.
Moody *v.* Payne, Same *v.* Clarke, — ditto.
James *v.* James, Same *v.* Same, Same *v.* Lloyd, — ditto.
Salmon *v.* Green, ditto.
Reid *v.* Phillips.
Valland *v.* Amiot, exons.
Dobson *v.* Methven.
Hargrave *v.* Hargrave, fur. dirs. & costs.
Bayley *v.* Shearwood, ditto.
Filby *v.* Filby, ditto and petn.
Christy *v.* Courtenay, fur. dirs. and costs.
Woolard *v.* Hill, fur. dirs. and petition.
Lockhart *v.* Alder, Same *v.* Crouch, — exons. of plaintiff and fur. dirs. and costs.
Havergal *v.* Harrison, Same *v.* Same, — fur. dirs. and costs.
Short, Attorney-General *v.* Gains, ditto, and 3 petitions.
Johnson *v.* Nicholls.
Padwick *v.* Platt.
Grimsdale *v.* Grimsdale.
Rudge *v.* Winnall, fur. dirs. and costs, and petition.
After Term, Attorney-General *v.* Fuller.
Jones *v.* Powell, Same *v.* Same, Same *v.* Wilson, — fur. dirs. and costs.
Walker *v.* Milne, Same *v.* Same, — exons.
Whiffin *v.* Hartwright.

M'Calmont v. Rankin.
Same v. Turner.
Same v. Bird.

Townshend v. Martin, fur. dirs. and costs.
Smith v. Smith.
Smith v. Downton.

Malins v. Greenway,
Craddock v. Same,
Malins v. Same,
fur. dirs. & costs and petn.

Lacklison v. Blane,
Same v. Same,
fur. dirs. and costs.

Kirkby v. Platel, exons.
Same v. Whithorne, fur. dirs. and costs.

Trye v. Gloucester Corporation.
Cross v. Sprigg, exons. and fur. dirs. and costs.

Newman v. Hutton,
Same v. Same,
Wood v. Same,

Mumford v. Chapman.

Douglas v. Willes,
Same v. Same,
Same v. Puson,
Same v. Mackinnon,
fur. dirs. and costs.

Humble v. Humble, 12 causes, fur. dirs. and costs.
Attorney-General v. Stevens.
Fuswell v. Elwin.
Atcheson v. Atcheson, and petition.
Lassence v. Lescher.

Price v. Berrington,
Same v. Fothergill,
Same v. Same,
fur. dirs. and costs.

Gooch v. Gooch,
Same v. Clarke,

Edgell v. Wickham, fur. dirs.
Lucas v. James.

Dashwood v. Auriol,
Coffin v. Dashwood,
Dashwood v. Coffin,
Coffin v. Coffin,
fur. dirs. and costs.

Culaba v. Cheese, ditto.

Davey v. Birch,
Same v. Same,
Same v. Same,
Same v. Barnett,
Same v. Birch,
Same v. Same,
fur. dirs. and costs, and petition.

Bromley v. Wright,
Same v. Burrows,
Same v. Wright,
Same v. Burrows,
fur. dirs. and costs.

Evans v. Davies,
Same v. Jones,
Same v. Morgan,
Same v. Jones,
Same v. Evans,
fur. dirs. and costs.

Smith v. Smith, ditto.

NEW CAUSES.

Attorney-General v. Chester Corporation.
Harrison v. Harrison.
Lawrence v. West Middlesex Water Works.
Naylor v. Naylor.
Beckett v. Cawood.
Chancellor v. Morecraft.
Lee v. Elmslie.
Reynell v. Sprye,
Same v. Same,
M'Donnell v. Haynes.
Attorney-General v. Bingham, fur. dirs. and costs.
Winn v. Fenwick.

Pelly v. Wathen
Same v. Lewis,
Same v. Lewis,
Same v. Hall,
Same v. Hooper,
exons.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

Dobson v. Lyall, fur. dirs. pt. hd.
Robinson v. Sollory,
S. O., Ashburner v. Wilson, fur. dirs. and costs.
S. O., Dunston v. Dunston, 3 causes, fur. dirs.
25th Jan., Boycott v. Morse, 2 causes.
Ditto, Digby v. Boycott, 3 causes.
S. O., Marshall v. Carter.
S. O., Edge v. Duke, 2 causes.
Bodington v. Great Western Railway Company.
S. O., Gregory v. Wilson.
Willis v. Jones, fur. dirs. and costs.
S. O., Myers v. Perigal, ditto
Coleman v. Mellersh.
Robinson v. Williams.
Thornton v. Knight.
Dykes v. Taylor, exons.
Drever v. Maudsley, 7 causes, fur. dirs.
Simkins v. Webb.
Smith v. Pincombe, 2 causes.
Glover, otherwise Gordon, v. Hall.
Chipchase v. Simpson.
Elkington v. Aplen, 2 causes.
Holloway v. Collier.
Chambre v. Flight.
Walter v. Corpe.
Duff v. Chester.
Worsley v. Woodford.
Boothby v. Boothby.
Onslow v. Wallis.
Tomlinson v. Troughton
Haydock v. Tomlinson.
fur. dirs. and costs.
Jones v. Francis, fur. dirs. and costs.
Moorley v. Smith.
Miller v. Priddon.
Attorney-General v. Finch, 2 causes.
Surtees v. Hopkinson, fur. dirs. and costs.
James v. Jones.
S. O. G., Alt v. Gregory.
Dudley v. Burrage.
Field v. Jennings.
Watts v. Symes, 2 causes.
Marks v. Solomons, fur. dirs. and costs.
Baxter v. Abbott, 3 causes and ditto.
Banner v. Strachan, fur. dirs.
Ditto v. Ditto, cause.
11th Jan., Baker v. Salmon.
Shelton v. Watson, fur. dirs. and costs.
Rowland v. Witherden.
Earl of Balcarras v. Hudson.
Ligoure v. Marryatt, fur. dirs. and costs.
Wiseman v. Barratt ditto.
Worthington v. Morgan.
Coleman v. Fielder.
Rowe v. Leyland.
Palmer v. Goren.
Dixon v. Wilkinson.
Morisson v. Moxon.
Aked v. Aked, fur. dirs. and costs.
Briggs v. Deveroux
Ditto v. Brenton
Ditto v. Stansfield
Barker v. Wylde, 3 causes, fur. dirs. and
Daintree v. Day.
Preece v. France
Woodhams v. Woodhams, 3 causes
and costs.

Elsam *v.* Hall, fur. dirs. and costs.
Hutton *v.* Hayley.
{Whitchurch *v.* Whitchurch / Ditto *v.* Parrott} fur. dirs. and costs.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Gregson *v.* The East Anglian Railway Company, demurrer.
Yetts *v.* Norfolk Railway Company, 2 ditto
S. O., Weighman *v.* Powell.
{Kent *v.* Underhill. / Capper *v.* Ditto.}
Attorney-General *v.* Harvey, fur. dirs. and costs.
Stephens *v.* Richards.
Stanley *v.* Bulkeley.
Wilkinson *v.* Candlish.
S. O. {Milne *v.* Baldwin. / Ditto *v.* Green.}
{Stronger *v.* Hawkes. / Hawkes *v.* Ditto.}
S. O. Paterson *v.* Mills.
Alexander *v.* Bushby, fur. dirs. and petn. pt. hd.
Dawson *v.* Robinson.
Cowan *v.* Hymers.
S. O. G., Aglionby *v.* James, fur. dirs.
Dixon *v.* Linn, 3 causes and ditto.
S. O., Cutts *v.* Riddell.
Hughes *v.* Scarborough.
Gardom *v.* Williams.
Ackers *v.* Williams.
Foligno *v.* Goldner.
Barraclough *v.* Hull.
Nunn *v.* Truscott.
Sharp *v.* Giblett.
Fowell *v.* Dodson, 2 causes.
Howard *v.* Carr.
Browne *v.* Milne, fur. dirs. and costs.
Brown *v.* Mundy.
Morehouse *v.* Newton, exons. and fur. dirs,
Savery *v.* Savery.
Ditto *v.* Ditto.
Harward *v.* Gainer.
Lee *v.* Delane.
Rees *v.* Chilton.
Harris *v.* Hamlyn.
Trelawny *v.* Mostyn.
Mortimer *v.* Hartley, fur. dirs. and costs.
Robertson *v.* Makeham.
Vicq *v.* Bailly, fur. dirs. and costs.
Cowell *v.* Watts.
Twyford *v.* Massey.
Penrice *v.* Penrice, fur. dirs. and costs.
Wynne *v.* Price.
Steele *v.* Parsons, fur. dirs. and costs.
Galloway *v.* Ridley.
Clark *v.* Cook, exons.
Humpfrey *v.* Gery, fur. dirs. and costs.
Short, Griffith *v.* Parr.
Middleton *v.* Youden.
Dunn Gardner *v.* Dunn Gardner, 4 causes, fur. dirs. and costs.
Nisbitt *v.* Fisher.
Watts *v.* Cowell.
Howard *v.* Howard
Brander *v.* Bull.
Hulbert *v.* Hulbert.
Billing *v.* Webb, fur. dirs. and costs.
Howkins *v.* Jackson.
Andrew *v.* Andrew, exons., 2 pets.
Daniel *v.* Daniel, exons.

Vice-Chancellor Wigram.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Last day of Tr. T., Chandler *v.* Corke.
Trin. T., Nesfield *v.* White.
Morgan *v.* Bosvile.
Butler *v.* M'Kenzie.
Ditto *v.* Ditto.
Green *v.* Green.
Martinez *v.* Winstanley,
20th Jan., Bull *v.* Bengough.
Part heard, Inge *v.* Kenny, 7 causes, fur. dirs.
15th Jan., Nash *v.* Ridge.
Holland *v.* Lushington, fur. dirs. and costs.
Chant *v.* Brown, exons.
Ditto *v.* Ditto, ditto.
White *v.* Godmond, fur. dirs. and costs.
{Evans *v.* Protheroe, / Ditto *v.* Ditto.} ditto.
{Fyler *v.* Morris, / Ditto *v.* Judge.} ditto.
Jackson *v.* Milfield ditto.
Lander *v.* Ingersoll ditto.
{Senior *v.* Dickenson. / Ditto *v.* Hope.}
{Chambers *v.* Artis, / Ditto *v.* Ditto,} fur. dirs. and costs.

COMMON LAW SITTINGS.

[For *Queen's Bench* see p. 180, *ante*.]

Common Pleas.

In and after Hilary Term, 1849.

In Term.

MIDDLESEX.		LONDON.	
Wednesday	Jan. 17	Friday	Jan. 19
Wednesday	24	Friday	26

After Term.

MIDDLESEX.		LONDON.	
Thursday	Feb. 1	Friday	Feb. 2

The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Friday the 2nd Feb., in London, no causes will be tried, but the court will adjourn to a future day.

Exchequer of Pleas.

In and after Hilary Term, 1849.

In Term.

IN MIDDLESEX.

1st Sitting, Friday	Jan. 12
2nd Sitting, Friday	19
3rd Sitting, Thursday	25

IN LONDON.

1st Sitting, Thursday	Jan. 18
2nd Sitting, Wednesday	24

After Term.

IN MIDDLESEX.		IN LONDON.	
Thursday	Feb. 1	Friday	Feb. 2

(To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

COMMON LAW CAUSE LISTS.

Queen's Bench.

NEW TRIALS.

Remaining undetermined at the end of the Sittings after Michaelmas Term, 1848.

Easter Term, 1846.

York.—Worth & another *v.* Gresham—Dundas. (Stands till judgment given in a similar case in Court of Error.)

Easter Term, 1848.

London.—Tucker, Sec., &c. *v.* Roberts and others—Martin.

Kent.—Doe d. Warren and another *v.* Brydges (Brydges Ten.)—Sir F. Thesiger.

Surrey.—Daw *v.* Scott and another—Lush.

Surrey.—Webb and another, executors *v.* Spicer—Serjeant Channell.

Surrey.—Same *v.* Salmon—Same.

Wilts.—The Queen *v.* Inhabitants of Crieklade—Crowder.

Devon.—Steer *v.* Bowerman, extrix.—Same.

Cornwall.—Doe d. Vingoe and another *v.* Nicholls—Same.

Cornwall.—Doe d. Thomas and another *v.* Pascoe—Same.

Denbigh.—Doe d. Clay and others *v.* Jones and others—Townsend.

Northampton.—Doe d. Langley and another *v.* King—Flood.

Leicester.—Baily and another *v.* Macaulay—Whitehurst.

Warwick.—Same *v.* Pearson—Same.

Warwick.—Lord Somerville and others *v.* Dawson—Same.

Norfolk.—Briggs *v.* Merchant Traders' Loan Insurance Ship Association—Prendergast.

York.—Shaw *v.* York and North Midland Railway Company—Knowles.

York.—Dixon *v.* Burton—Same.

Liverpool.—Marriott *v.* Cotton—W. H. Watson.

Liverpool.—Bain *v.* Kirk—Cowling.

Liverpool.—Hassall and another *v.* Cole—Knowles.

Cardigan.—Jones *v.* Hall, Esq.—Serjeant H. G. Jones.

Chester.—Vaughan *v.* Mathews—Chilton.

Tried during Easter Term, 1848.

Middlesex.—Beale *v.* Cleobury—Chambers.

Middlesex.—Brown *v.* M'Lean—Serjeant Shee.

Trinity Term, 1848.

Middlesex.—Sewell and another *v.* Marshall—Humfrey.

Middlesex.—Turrill *v.* Crawley—Whately.

Middlesex.—Doe d. Gordon *v.* Story—Bliss.

Tried during Trinity Term, 1848.

Middlesex.—Silk *v.* Stones—Prentice.

Michaelmas Term, 1848.

Middlesex.—Brown *v.* Andrew—Serjeant Shee.

Middlesex.—Doe d. Darlington *v.* Ulph—Crowder.

Middlesex.—Gardner *v.* Slade and wife—Same.

Middlesex.—Hulse and others *v.* Redaile and others—Sir F. Thesiger.

London.—Bain and others *v.* Ricketts and others—Martin.

London.—Baily and another *v.* Haines—Humfrey.

London.—Small *v.* Navin—Sir F. Thesiger.

Essex.—Sturges and another *v.* Cooper and another—Serjeant Shee.

Essex.—Doe d. Carter *v.* Barnard—Chambers.

Devon.—Doe d. Moore *v.* Dunning and another.—Butt.

Cornwall.—Doe d. Rowe *v.* Howell—Crowder.

Bristol.—Scott *v.* Farris—Serjeant C. C. Jones.

Cardigan.—The Queen *v.* John Bowen—W. H. Watson.

York.—The Queen *v.* Inhabitants of Brightside Bierlowe—Hall

York.—The Queen *v.* Inhabitants of Attercliffe cum Darnall—Same.

York.—The Queen *v.* Inhabitants of Tinsley—Same.

Durham.—Jenkyns *v.* Hutchinson—Martin.

Lancaster.—Robinson *v.* Waddington—Pashley.

Liverpool.—Walley *v.* Stone and others—Martin, for defendant, M'Connell.

Liverpool.—Company of Proprietors of Rochdale Canal *v.* King and others—Martin.

Liverpool.—James and others *v.* Lynn, clerk—Knowles.

Liverpool.—Jenkyns *v.* Brown and others—W. H. Watson.

Cambridge.—Hammond *v.* Bendyske and another—Same.

Cambridge.—Fuller *v.* Brown and another—Serjeant Byles.

Cambridge.—Preston *v.* Titchmarsh—O'Malley.

Suffolk.—Doe d. Marriott, clk., *v.* Marquis of Hertford—Andrews.

Suffolk.—Rudland *v.* Mills and others—Serjeant Byles.

Oxford.—Allen *v.* Gilbes and another—Whateley.

Oxford.—Same *v.* Same—Serjeant Talfourd.

Worcester.—Doe d. Mence *v.* Hadley—Whateley

Stafford.—Bate *v.* Pane—Keating.

Tried during Michaelmas Term, 1848.

Middlesex.—Gridley *v.* Austin—Crowder.

SPECIAL CASES AND DEMURRERS.

Hilary Term, 1849.

Whitmore and Co.—Morris, Bt., *v.* Dk. of Beaufort, dem.

(Stands over by consent.)

Bolston.—Ostler *v.* Cooke and others.—Special case.

Gregory & Co.—Trinity House *v.* Beadle—ditto.

Tilson and Co.—Green and others *v.* St. Katherine Dock Company, special case.

Johnson.—Everest and others *v.* Humphery, dem.

Tatham and Co.—M'Swiney *v.* Royal Exchange Assurance Company, special case.

Cobbett.—Cobbett, a pauper, *v.* Hudson, dem.

Smedley & Co.—Ryan *v.* Clark and another, dem.

Lane.—Nolan *v.* Elster and another, dem.

Tilson and Co.—West Cornwall Railway Company *v.* Mowatt, dem.

Wigleworth and Co.—Ayston and another *v.* Abbott, clk., and another, special case.

Wade and P.—Doe d. Payne *v.* Plyer, special case.

Maples & Co.—Elliot and others *v.* Von Glehn, dem.

Mounsey & G.—Doe dem. Dand *v.* Thompson, special case.
Lyddon.—Wilson, Bt. *v.* South Eastern Railway Company, dem.
Newton.—Newton *v.* Bishop, dem.
Warter.—Sherlock *v.* Spiers, special case.
M'Leod and S.—Smith and another *v.* Alexander and another, dem.
Mortimer.—Duke of Rutland *v.* Bagshaw and another, N. O. V.
Western and Son.—Ladbrooke *v.* Stuteley, dem.
Maples and Co.—Small and others *v.* Gibson, N. O. V.
Sanger.—Howley, W., extrix., &c. *v.* Knight, sued with another, dem.
Chilton and Co.—Sturge and another *v.* Jenkins, special case.
Ivimey.—Dowling *v.* Becke, dem.
Crafter.—Milner *v.* Janes, dem.
Cree and Son.—Wilson *v.* Eden, Bt., special case.
Gatty and T.—Doe dem. of Her Majesty *v.* Archbishop of York, special case.
Marson and D.—Marson and another *v.* Lund, dem.
Wyche.—Flockton and others *v.* Hall and others, dem.
Johnson.—Everest and another *v.* Duke, Knt., dem.
Beddome.—Dowdall *v.* Hallett and others, dem. to plaintiff's declaration, and to defendants Clark, Allan, and Hatfield's pleas.
Gill.—Meyer and another *v.* Cockburn, dem.
Kinder.—Ryan *v.* Giles, dem.

ENLARGED RULES.

For Hilary Term, 1849.

First Day.

Bland *v.* Lord Alvanley.
Doe d. Richmond and others *v.* Smith and another.
In the matter of the London and North Western Railway Company, for Bail Court.
Chillis and another *v.* Higgs, sen. and another.
Akerman *v.* Akerman, for Bail Court.
Brown, Clk., *v.* Hutchinson and others.
Doe dem. Earl of Ashburton *v.* Michael and another.
Smith and another *v.* Reece, for Bail Court.
Reece *v.* Smith and another, for Bail Court.
In the matter of Stevenson and Shickle in the County Court of Cambridge, for Bail Court.
The Queen *v.* The London and North Western Railway Company.
The Queen *v.* William Robinson, for Bail Court.
The Queen *v.* Edward Owen Bishop, for Bail Court.
The Queen *v.* The Justices of West Riding, for Bail Court.

Second Day.

In the matter of John Scriven, plaintiff, and W. H. Deighton, defendant, in the County Court of Yorkshire, for Bail Court.
In the matter of Samuel Phillips Hitchcock, gent., one, &c., for Bail Court.
Varty and others *v.* Duncan.
In the matter of Thomas Frith and others, plaintiffs, and John M'Lachlan, defendant, in the County Court of Yorkshire, for Bail Court.
Flanders *v.* Bunbury.
In the matter of arbitration between Samuel Lloyd, jun., and others, for Bail Court.
In the matter of arbitration between Samuel Addison and another, for Bail Court.
Bevan *v.* Jones, for Bail Court.
The Queen *v.* Justices of Birmingham.
The Queen *v.* Justices of Peterboro', for Bail Court.
The Queen *v.* Ipswich and Bury St. Edmunds Railway Company.
The Queen *v.* Manchester and Southport Railway Company.

Third Day.

Hutchinson *v.* Shepperson and others, for Bail Court.
Bayles, jun. *v.* Rablah and another, for Bail Court.

5th Day.

The Queen *v.* The Inhabitants of Angmering, for Bail Court.

Common Pleas.

For Hilary Term, 1849.

Wednesday, Jan. 17—Special Arguments.

Engstrom and others *v.* Brightman and others.
Sanderson *v.* Dobson.
Dean and Chapter of Ely *v.* Cash.
Boden *v.* Smith and others.
Woolf *v.* City Steam Boat Company.
Monypenny *v.* Dering.
Vincent *v.* Bishop of Sodor and Man and others.
Pilgrim *v.* Southampton and Dorchester Railway Company.
Reed *v.* Shrubsole.
Jones *v.* Ashpitel.
Ward and others *v.* Dalton.
Munroe and others *v.* Bordier and others.
Gooch *v.* Shordiche.
Batty *v.* St. Aubyn, Clk.
Besset *v.* De Witte.
Graham and others, assignees, &c. *v.* Cox and another.
Wetherell *v.* Julius and another.
Field *v.* Walker.
Empson and another *v.* Knowles.
Sands and others *v.* Clarke.
Wilson and others *v.* Bevan.
Birch *v.* Rees.
Smauer, admix. *v.* Great Western Railway Co., loss of life.
Same *v.* Same, loss of goods.
Hill *v.* Kempshall.
Wood *v.* Governors and Company of Copper Miners in England.
Smith *v.* London, Brighton, and South Coast Railway Company.
Richards and another *v.* Egan.
Tate *v.* Hitchings, sued with others.
Robinson and ux. *v.* Marquis of Bristol and others.
Devaux and another *v.* Conolly.
Robinson and ux. *v.* Marquis of Bristol and others.
Peterson and another *v.* Davis.
Bolckow and another *v.* Oliver.
Kinnersley *v.* Knott.
Doe dem. Brammall and another *v.* Collinge.
Westropp and others *v.* Solomon.
Fagan *v.* Harrison.

Friday, Jan. 19—Special arguments.

The Bamven Iron Company *v.* Barnett.
Edwards and others *v.* Jevons.
Johnson *v.* Frew.
Gibbons *v.* Vouillon.

Wednesday, Jan. 24 } Special arguments.
Friday . . . . 26 }

REMANET PAPER.

Enlarged Rules.

To 1st day.—Poncia v. White.
To 1st day.—Ilderton v. Sill.

New Trials of Easter Term, 1847.

Suffolk.—Vipan v. Gay and others.
Suffolk.—Same v. Same.

New Trials of Trinity Term, 1847.

Middlesex. — Barnes, administrator, v. Ward.—Per. cur. to be re-argued.

New Trials of Michaelmas Term, 1847.

London.—Powell v. Bradbury and another.
London.—Beard v. Egerton and others.
London.—Croll v. Edge.

New Trials of Hilary Term last.

London.—Schwartz v. Sharp and another.

New Trials of Easter Term last.

Middlesex, Kinning v. Buchanan, Gent.
Middlesex, Duke of Brunswick v. Slowman and others.
Middlesex, Same v. Same.
Middlesex, Same v. Same.
Middlesex, Sargent v. Gannon.
Middlesex, Bowyer, assignee, v. Long.
Middlesex, Thompson v. The Wealeyan Newspaper Association.
Middlesex, Same v. Same, (unless special case consented to.)
Middlesex.—Summers v. Davis, sued, &c.
Middlesex, Franklin v. M'Leod.
London, Richards v. London, Brighton, and South Coast Railway Company.
London, Lewis v. Campbell.
London, Walker v. Giles and another.
London, Bayley v. Wilkins.
London, Somerville v. Hawkins.
London, Jones and another v. Broadhurst.
Herts, doe (Gutteridge) v. Sowerby.
Herts, Hankin, executor, &c., v. Smith, heir, &c., and others.
Kent, Sisco v. Curling and another.
Surrey, Pennell and others, assignees, v. Stephens.
Surrey, Mayhew and another, assignees, v. Herrick.
Surrey, Same v. Same.
Surrey, Turner v. Maryweather.
Essex, Wright v. Colls.
Somerset, Doe (Kinglake) v. Beviss.
Somerset, Lee v. Lester.
Cornwall, Peter v. Daniel.

New Trials of Trinity Term last.

Middlesex.—Sawyer v. Langford.
Middlesex.—Thorogood, admix. v. Bryan.
London.—French v. Candy.
London.—Maxey v. Thomas.
London.—Rathbone v. Clarke.
London.—Green v. Slack.
London.—Groom and another, assignees, v. Watson.
London.—Smith v. Thompson.

New Trials of Michaelmas Term, last.

Middlesex.—Morgan v. Field.
Middlesex.—Newton v. John Chaplin.
Middlesex.—Russell v. Tubb.
Middlesex.—Smith v. Pritchard and others.
London.—Monaghan v. Walter and another.
London.—Fitch v. Martyr.
London.—Howard v. Mull.
London.—Smith and others v. The Hull Glass Company.
London.—Moss and others v. Smith and another.
London.—Stebbing v. Spicer.
Denbigh.—Doe Williams v. Sparrow.
Chester.—Worthington v. Warrington.
Essex.—Wilby v. Elston.
Sussex.—Doe Eversfield and others v. Troup.
Surrey.—Alcock v. Butt.
Surrey.—Cory v. Norfolk Railway Company.
Surrey.—Kempson and another v. Gayfere.
Surrey.—Hamilton v. Cochran.
Suffolk. — Doe Archer and another v. Johnson and another.
Suffolk.—Same v. Same.
Norfolk.—Heyhoe v. Burge.
Norfolk.—Morse and another v. Same.
York.—Duncan v. Topham.
Hants.—Pilgrim v. The Southampton and Dorchester Railway Company and another.
Bristol. — Acraman and others, assignees, &c., v. Morrice.
Bristol.—Lewis, exor., v. Lloyd.
Glamorgan.—Doe Rogers v. Price and another.
Oxon.—Hicks v. Gregory.

CUR. AD VULT.

Morgan and another, executors, v. Earl Abergavenny.
Smith v. Kenrick.
Murray and others v. Hall.
Phillips v. Lewis.
Lord Newborough and others v. Schroder.
Nickels v. Ross, jun.
Same v. Same.
Garrard v. Tuck (in dower).
Fitzgerald v. Fitzgerald.
Hopwood v. Thorn.
Young v. Raincock.
Crosfield v. Morrison.
Morrison v. Chadwick.
Edmonds and others v. Challis and another.
Caunt v. Thompson.
Same v. Same.
Russell v. Briant.

Exchequer of Pleas.

PEREMPTORY PAPER.

For Hilary Term, 1849.

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

Rule Nisi.

2nd Nov. 1848.—Howell v. Rodbard and others—Mr. Crowder and Serjeant Kingslake.

18th Nov. 1848.—Downes v. Geary—Mr. Godson and Mr. Lush.

16th Nov. 1848.—Cooper v. Cooper—Mr. Martin and Mr. Lush.

16th Nov. 1848.—In the matter of the arbitration between the Wilts, Somerset, and Weymouth Railway Company and C. B. Fooks—Mr. Martin and Sir F. Kelly.

21st Nov. 1848.—In the matter of George Smith, gent., one, &c.—Mr. Martin and Mr. Watson.

13th June, 1848.—In the matter of the arbitration between William Baker, Esq., and others and John Sandars, Esq. — Mr. Whitehurst and Mr. Martin.

6th Nov. 1848.—Cawkwell and another v. Silva—Mr. Chambers and Mr. Serjeant Channell.

3rd Nov. 1848.—Brown v. Yardley—Mr. Chambers and Mr. Serjeant Shee.
13th Nov. 1848.—M'Glassan v. Lawson—Mr. S. Temple and Mr. Atherton.
9th Nov. 1848.—Bail v. Mallow and another—Mr. O'Malley and Mr. Pashley.
25th Nov. 1848.—Varley and others v. Poston and others—Mr. Petersdorff.
25th Nov. 1848.—Satton v. Rawlings—Mr. Prideaux.
13th Nov. 1848.—Watkins v. Watkins—Mr. Lush and Mr. A'Beckett.
20th Nov. 1848.—Kinder v. Andy, in the matte of William Sidney Kinder, gent.—Mr. Lush and Mr. Martin.
9th Nov. 1848.—In re Hammersmith Rent Charge—Mr. Lush and Mr. H. Hill.
13th Nov. 1848.—Smith v Roberts—Mr. Lush and Mr. Bovill.
4th Nov. 1848.—Richetts and others v. Noble—Mr. Lush and Mr. Serjeant Shee.
18th Nov. 1848.—In re Willtam Henry Reece, Gt.—Mr. H. Hill and Mr. Bovill.
6th Nov. 1848.—Brymer and others, assignees, &c., v. The Thames Haven Dock and Railway Co.—Mr. Aspland and Mr. Cowling.

DEMURRERS.

For Hilary Term, 1849.

Remanets from Michaelmas Term, 1848.

For Judgment.

Jones v. Morris and another, (Replevin 1st action.)
(Heard 31st May, 1848.)
Norton v. Walker.
(Heard 20th Nov. 1848.)

For Argument.

Tatton v. Hammersley.
The London, Brighton, and South Coast Railway Company v. Goodwin.
Moore v. The Metropolitan Sewage and Manure Company.
Tasker, clk., v. Bullman, covt.
Castell v. Kirkland.
Frampton, P. O. v. Habgood.
Dawson v. Wrench, sued with others.
Curlewis v. Clark, sued, &c.
Southby v. Bridgman.
Duncan v. Rawlins and another.
Pbutifex and others v Hoile.
Fesemeyer v. Rickard, shareholder, &c.
D'Arcy v. Lambert.
Sharp, extrix., &c. v. Stubbs.
Barmester, P. O., &c. v. Cropton, jun.
Same v. Same.
Duke of Beaufort v. Morris, (in case).
Chauntler v. Kobinson, clk.
Sewill v. Dyne.
Gilbert v. Cooper.
Maryat v. Chapman.
Gregory and others v. O'Connell.
Nees v. Bertram and another.
Partridge v. Gardner and others.
Rhodes and another v. Turner.
Bunbury, extrix., v. Hewson, exor., &c.
Howcutt, exor., &c., v. Bowser.
Wightman v. Wray and another.
Gilbert v. James.
Carr v. Mallan.
Simpson v. Lee and others.
The Governor and Company of the Bank of England v. Miller.
Grimsley v. Parker, clk.
The Norfolk Railway Company v. M'Namara.
Skipp v. Davis.
Pidgeon v. Burslem.
Morgan v. Cubitt and another.
Wooler v. Swinton.
Miller and another v. De Burgh.

SPECIAL CASES.

For Hilary Term, 1849.

Remanets from Michaelmas Term, 1848.

For Judgment.

Lamprell v. The Guardians of the Billericay Union.
(Heard 7th June, 1848.)
Wood and others v. Waud and others.
(Heard 1st Dec. 1848.)

For Argument.

Cooper v. Norfolk Railway Company, by order of Baron Alderson.
Williams, exor., &c., v. Griffith, by order of *Nisi Prius*.
Purvis and others v. Traill, Esq., by order of Baron Parke.
Bamford and others v. Iles and others, by order of Baron Alderson.
Boyd and another v. Mangles and others, by rule of Court.
Doe dem. Sharp v. Wells, by order of Baron Parke.
Smith v. Cornthwaite, by order of *Nisi Prius*.
Forrest and others v. Whiteway and others, by order of Vice-Chancellor Knight Bruce.
Harcourt and wife v. Wyman, proms.
Same v. Same, debt
Same v. Same, covt.
Doe d. Harcourt and ors. v. Wyman
} Pursuant to award.
Doe d. Clift and another v. Birkhead, by order of Baron Alderson.
Spooner v. Payne, by order of Vice-Chancellor Knight Bruce.
Hamilton and wife and another, extrix., &c., v. Spottiswoode, by order of Baron Parke.
Feschemaker v. Renshaw, by order of *Nisi Prius*.
Bellett and others, assignees, &c., v. Moore, by order of *Nisi Prius*.
Murray and another v. Murray and another, by ordet of Baron Parke.
Ker and others v. Pickering, by order of Baron Parke.

NEW TRIAL PAPER.

For Hilary Term 1849.

FOR JUDGMENT.

Moved Michaelmas Term, 1847.

Middlesex, Mr. Baron Platt.—Morley v. Attenborough—Mr. Martin.
(Heard 11th May, 1848.)

Moved Easter Term, 1848.

London, Lord Chief Baron.—Landon v. Beioley—Mr. Crowder.
(Heard 13th June, 1848.)

Middlesex, Lord Chief Baron.—Long v. Rennie and another—Mr. Hill.
(Heard 18th Nov. 1848.)

Liverpool, Mr. Baron Rolfe.—Standish v. Ross, jun.—Mr. Martin.
(Heard 18th Nov. 1848.)

Warwick, Lord Chief Justice Wilde.—Barrett and another v. Jermy and others—Mr. Humfrey.
(Heard 7th Dec. 1848.)

Warwick, Mr. Justice Maule.—Cox v. The Midland Railway Company—Mr. Humfrey.
(Heard 8th Dec. 1848.)

Warwick, Mr. Justice Maule.—Davies and another v. The Midland Railway Company—Mr. Humfrey.
(Heard 9th Dec. 1848.)

Warwick, Mr. Justice Maule.—Silk v. Same—Mr. Humfrey.

FOR ARGUMENT.

Moved Hilary Term, 1845.

Middlesex, Lord Chief Baron.—Eglinton v. Busk and others—Mr. Attorney-General.

Moved Michaelmas Term, 1847.

London, Lord Chief Baron.—Bennside v. Dayrell—Mr. Martin.

Moved Easter Term, 1848.

Stafford, Mr. Justice Patteson.—Dubbs v. Penn—Mr. Serjt. Talfourd.

Hereford, Mr. Justice Patteson.—Price and another, executors, &c. v. Woodhouse and another—Mr. Godson.

Gloucester, Mr. Justice Patteson.—Cameck v. Jones—Mr. Godson.

Swansea, Mr. Justice Williams.—The Duke of Beaufort v. The Mayor, Aldermen, and Burgesses of Swansea—Mr. Attorney General.

Moved after the 4th day of Easter Term, 1848.

Middlesex. Mr. Baron Alderson.—Arnold v. Ryan—Mr. Serjt. Wilkins.

Middlesex, Mr. Baron Alderson.—Glen v. Dungey and another—Mr. Pearson.

Moved Trinity Term, 1848.

Middlesex, Lord Chief Baron.—Gaylard v. Morris and another—Mr. Watson for deft. Robert Morris.

Middlesex, Lord Chief Baron.—Greville v. De Rutzen—Mr. Humfrey.

London, Lord Chief Baron.—Campbell v. Pepper—Mr. Lush.

Moved Michaelmas Term, 1848.

Middlesex, Lord Chief Baron.—Boosey v. Purday—Mr. Attorney-General.

Middlesex, Lord Chief Baron.—Same v. Same—Mr. Bovill.

Middlesex, Lord Chief Baron.—Macregor v. Keily—Mr. Crowder.

Middlesex, Lord Chief Baron.—Clayton v. Clayton and others—Mr. Cockburn.

Middlesex, Lord Chief Baron.—Faithful v. Proctor—Mr. Humfrey.

Middlesex, Lord Chief Baron.—Brown v. Sease—Mr. Chambers.

Middlesex, Lord Chief Baron.—Edwards v. Same—Same.

Middlesex, Lord Chief Baron.—Grew v. Hill—Mr. Petersdorff.

Middlesex, Lord Chief Baron.—Treherne v. Biers—Mr. Lush.

London, Lord Chief Baron.—Miller and another v. Atlee—Mr. Martin.

London, Lord Chief Baron.—Mackintosh and another v. Mitchesson—Mr. Martin.

London, Lord Chief Baron.—Gomme v. Beaith-waite—Mr. Chambers.

Hertford, Lord Chief Baron.—Angell v. Wormley, Bart.—Mr. Serjeant Dowling.

Chelmsford, Mr. Justice Coltman.—Roberts, clk., v. Tucker, clk.—Mr. Serjeant Shee.

Maidstone, Lord Chief Baron.—Miller and others v. Hollingsworth and another—Same.

Maidstone, Lord Chief Baron.—Groat v. Rickstraw and others—Mr. Chambers for defendant Entheven.

Guildford, Lord Chief Baron.—Ablett v. Cassocott—Mr. Serjeant Shee.

Ipswich, Mr. Justice Maule.—Partridge and another v. Johnson and another, assignees, &c.—Mr. Petersdorff.

Ipswich, Mr. Justice Maule.—Hardcastle v. Hanson—Mr. O'Malley.

Worcester, Mr. Baron Platt.—Cooper v. Minshall—Mr. Huddlestone.

Stafford, Mr. Baron Platt.—Davis v. Dunlop—Mr. Whateley.

Stafford, Mr. Baron Platt.—Sharrod v. London and North Western Railway Co.—Mr. Godson.

Shrewsbury, Mr. Baron Platt.—Chamberlain and another v. Wall and another—Mr. Serj. Talfourd.

Gloucester, Mr. Baron Rolfe.—Yeates v. Woodward—Same.

Northampton, Mr. Justice Patteson.—Edwards and others, assignees, &c. v. Higgins—Mr. Whitehurst.

Northampton, Mr. Justice Patteson.—Harbridge v. Warwick—Same.

Derby, Lord Denman.—Rangeley v. London and North Western Railway Company—Mr. Macaulay.

Leicester, Mr. Justice Patteson.—Howcutt, exors. v. Bonsor—Same.

Warwick, Lord Denman.—Jackson v. Mills, admix.—Mr. Hayes.

Delgelly, Lord Chief Justice Wilde.—Williams and another, on affidavit v. Griffith, Esq.—Mr. Crompton.

Chester, Lord Chief Justice Wilde.—Faulkner v. Gibson—Mr. Martin.

Chester, Lord Chief Justice Wilde.—Brian v. Lackerstein—Mr. Townsend.

Winchester, Mr. Justice Coleridge.—Cattlin and another, assignees, &c. v. Sturges—Plaintiff, Cattlin in person.

Cornwall, Mr. Justice Williams.—Warren v. Lugger—Mr. Crowder.

Devizes, Mr. Justice Williams.—Mills v. The Alderbury Union—Mr. Cockburn.

Bristol, Mr. Justice Coleridge.—Gullick v. Hamley—Mr. Skinner.

Bristol, Mr. Justice Coleridge.—Cross v. Dando and others—Mr. Edwards.

York, Mr. Justice Cresswell.—Reedie, admix. &c. v. The London and North Western Railway Co.—Mr. Knowles.

York, Mr. Justice Cresswell.—Hobbitt, admix. &c. v. Same—Same.

York, Mr. Justice Cresswell.—Brooke and another v. Fariell, jun.—Mr. Martin.

York, Mr. Justice Cresswell.—Graburn, on affidavit, v. Horberry—Mr. Maniaty.

York Mr. Justice Cresswell.—Same v. Everett—Same.

Newcastle, Mr. Justice Cresswell.—Ness v. Angus—Mr. Knowles.

Newcastle, Mr Justice Cresswell.—Same v. Geathwaite—Mr. Martin.

Newcastle, Mr. Justice Cresswell.—The Master, Pilots and Seamen of Newcastle-on-Tyne v. Hammond—Mr. Martin.

Newcastle, Mr. Justice Cresswell.—Ness v. Armstrong—Mr. Watson.

Newcastle, Mr. Justice Cresswell.—Same v. Richardson—Same.

Newcastle, Mr. Justice Cresswell.—Same v. Glaholm —Mr. Watson.

Carlisle, Mr. Justice Erle—Aglionby v. Williams and others—Mr. Martin.

Lancaster, Mr. Justice Erle.—Williamson v. Heap —Mr. Baines.

Liverpool, Mr. Justice Erle.—Clarke, on affidavits, v. Holford—Mr. Attorney-General.

Liverpool, Mr. Justice Erle.—Turner v. Deane—Mr. Baines.

Liverpool, Mr. Justice Erle.—Cope v. The Thames Haven Dock and Railway Company—Mr. Martin.

Liverpool, Mr. Justice Erle.—Farrell v. Harrison —Mr. Atherton.

Moved after the 4th day of Michaelmas Term, 1848.

Middlesex, Mr. Baron Platt.—Bull, admor., &c., v. Ranken—Mr. Serjeant Wilkins.

Middlesex, Mr. Baron Platt.—Mercy v. Galot—Mr. O'Malley.

Middlesex, Mr. Baron Platt.—Horn v. Thornborough—Mr. Charnock.

London, Mr. Baron Platt.—Black v. Humphrey —Mr. Knowles.

Queen's Bench.—Crown Paper.

Hilary Term, 1848.

Manchester.—John Smith v. The Queen in error, (to be re-argued).

Bucks.—The Queen v. The Great Western Railway Company.

Same v. Same.

Northamptonshire.—The Queen v. Lord and Steward of Weedon Beck.

Monmouthshire.—The Queen v. The Inhabitants of Bedwelty.

Sussex.—The Queen v. The Inhabitants of Hamsey.

Norwich.—The Queen v. The Inhabitants of Fawncett, St. Mary.

Norwich.—The Queen v. The Inhabitants of Tacolnestone.

Berkshire.—The Queen v. The Inhabitants of Silchester.

Devonshire.—The Queen v. The Inhabitants of Totnes.

Lincolnshire.—The Queen v. William Clayton, jun.

Yorkshire.—The Queen v. John Blanshard and another.

Carnarvonshire.—The Queen v. The Inhabitants of St. Pancras, (with Bangor).

Essex.—The Queen v. The Inhabitants of Hatfield Peveril.

Liverpool.—The Queen v. The Mayor, &c. of Liverpool.

Breconshire.—The Queen v. The Inhabitants of Breconshire.

Lancashire.—The Queen v. George Knox and another.

Sussex.—The Queen v. The Inhabitants of St. Thomas (Winchelsea).

Derbyshire.—The Queen v. The Inhabitants of Llanddogget.

Middlesex.—The Queen v. The Inhabitants of St. Leonard, Shoreditch.

Yorkshire.—The Queen v. The Sheffield Canal Company.

Lincolnshire.—The Queen v. The Justices of Lindsey.

Middlesex.—The Queen v. The Inhabitants of Mile End Old Town.

Leeds.—The Queen v. William Scott James.

West]Riding of Yorkshire.—The Queen v. The Inhabitants of Linthwaite.

West Riding of Yorkshire.—The Queen v. The Inhabitants of Silkstone.

Surrey.—The Queen v. The Inhabitants of St. Olave, Southwark.

Middlesex.—The Queen v. The Inhabitants of St. George, Hanover Square.

Surrey.—The Queen v. The Inhabitants of Lambeth.

Warwickshire.—The Queen v. The Inhabitants of Priors Hardwick.

Yorkshire.—The Queen v. The Inhabitants of Goole.

Middlesex.—The Queen v. The Inhabitants of Ealing.

Hull.—The Queen v. The Governor, &c. of Poor of Hull.

Staffordshire.—The Queen v. The Inhabitants of Penkridge.

Salop.—The Queen v. The Inhabitants of Ellesmere.

Carmarthenshire.—The Queen v. The Kedwelly and Llanelly Canal and Dock Company.

Essex.—The Queen v. The Inhabitants of Leaden Roothing.

Somersetshire.—The Queen v. Henry Mees.

Surrey.—The Queen v. Thomas Holland.

Breconshire.—The Queen v. The Inhabitants of Merthyrmaur.

West Riding of Yorkshire.—The Queen v. The Inhabitants of Barnsley.

Carmarthenshire.—The Queen v. The South Wales Railway Company.

London.—The Queen v. The Baptist Missionary Society.

Lancashire.—The Queen v. The Inhabitants of Halliwell.

Middlesex.—The Queen v. The Directors of the Poor of St. Pancras.

Lancashire.—The Queen v. The Inhabitants of Preston.

Surrey.—The Queen, v. The Inhabitants of St. Mary Newington, (with Mountnessing.)

Surrey.—The Queen v. Same, (with Widford).

Bristol.—The Queen v. The Governor of the Poor of Bristol.

Derbyshire.—The Queen v. The Inhabitants of All Saints.

Somersetshire.—The Queen v. The Inhabitants of Winsford.

Middlesex.—The Queen v. The Inhabitants of Aston, nigh Birmingham.

Wilts.—The Queen v. The Inhabitants of Bradford.

East Riding, Yorkshire.—The Queen v. The Mayor and Aldermen of Hull.

Cornwall.—The Queen v. The Inhabitants of Crowan.

Lincolnshire.—The Queen v. John Perkins.

Cheshire.—The Queen v. The Inhabitants of Great Sutton.

Dorsetshire.—The Queen v. The Inhabitants of Portisham.

Hertfordshire.—The Queen v. William Thomas.

Lancashire.—The Queen v. The Inhabitants of Wigan.

Yorkshire.—The Queen *ats.* John Drury and others (in error).

Cambridgeshire.—The Queen v. The Newmarket Railway Company.

Cornwall.—The Queen v. The Inhabitants of Bodmin.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JANUARY 20, 1849.

——"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

PRIVATE ARRANGEMENTS BETWEEN DEBTORS AND CREDITORS.

After the colossal failures of 1847, the plan of winding-up the complicated and extensive affairs of insolvent firms under deeds of inspection, without having recourse to the Court of Bankruptcy, found great favour in the sight of a large portion of the commercial community. The system was thought to be at once advantageous to creditors and satisfactory to those who, from adverse circumstances, were unable to meet their pecuniary engagements. Just twelve months have elapsed, since we ventured to warn those who were suffering themselves to be deluded by the flattering expectations then held out, that the arrangements which they were induced to sanction would fail to secure the object all parties professed to have in view, namely, the speedy realisation of the assets of insolvent houses without expense, and the distribution of the assets so realised without unnecessary delay.* Faulty and defective as the Law of Bankruptcy is admitted to be, and objectionable as the system under which it is administered is felt to be by all practical men, we were satisfied then, as now, that the interests of all parties concerned in a just distribution of the property of the houses which had stopped payment, would be more effectually promoted by means of a fiat in Bankruptcy than by any scheme of voluntary liquidation, however plausible or apparently well-concerted. The result has more than justified our apprehensions.

The numerous attempts to wind-up insolvent concerns, under what may be called "the voluntary system," have, for the most part, ended in unmitigated disappointment. Case after case has occurred, where the experiment has been tried, and proved so little satisfactory to the parties interested, that it was thought necessary ultimately to bring the machinery of the Court of Bankruptcy into operation: thus conclusively demonstrating the inefficiency of the plans originally proposed and adopted, for winding-up under the control and superintendence of private inspectors. Amongst the cases in which abortive attempts were made in the first instance, to administer estates by private arrangement, followed ultimately by bankruptcy, we may enumerate (as comprising first class houses, in London only,) those of Ricketts and James; Bennett and Co.; Johnson, Cole, and Co.; Ackland, Osmond, and Co.; Lackerstein and Co.; Leslie, Alexander, and Co.; Stopford and Newcomen, (partners of the firm of Cockerel and Co.); and Cruikshank, Melville, and Co., with a host of smaller firms in town and country. In the instance last-mentioned, that of Cruikshank, Melville, and Co., the fiat was issued upon the petition of the Governors and Company of the Bank of England, a circumstance, we believe, novel, if not altogether unprecedented, in the history of that

* See Leg. Obs., vol. 35, p. 201.

great commercial establishment; and after several months had been occupied in fruitless endeavours to avoid resorting to the Court of Bankruptcy.

In some of the cases to which we have referred, the issuing of the fiat was not resorted to in any spirit of hostility to the bankrupts, but as affording the only means of investigating and effectually dealing with the complicated transactions and doubtful claims which the attempts at private arrangement had disclosed. In more than one instance, the bankrupts themselves, not only preferred, but earnestly desired, the interposition of the Court of Bankruptcy, as affording the only adequate protection and indemnity to persons whose incapacity to meet all pecuniary demands had arisen from misfortune, and not from misconduct. In every case considerable delay and expense had been incurred in endeavouring to avoid that proceeding which was eventually deemed the most expedient.

We are not at liberty to state the actual cost of any of the experiments terminating in the manner pointed out; but if the sums thus uselessly expended in each particular case could be stated, we have reason to think the aggregate amount would be found more considerable than is generally supposed. The sums expended, however, bear a very trifling proportion to the amount lost by the absence of speedy and effective means of enforcing the claims of creditors in respect of the estates of insolvent houses; and in nearly all the cases to which we have adverted, the results have been most disastrous to the great body of creditors. The flourishing statements manufactured by ingenious accountants, and put forward in the first instance, tried by the test of time, have proved mere imaginative creations. Creditors who were "promise-crammed," and buoyed up with the assurance their debts would be paid in full, are now satisfied their dividends will not consist of as many pence as they were at one time told to expect there would be shillings. In short, the scheme of "winding-up," without invoking the assistance of the existing legal tribunals, has proved utterly fallacious, and after the experience of the last year, we have no apprehension it will be soon again extensively tried.

Meanwhile, may we be excused for repeating that the reluctance exhibited by the commercial community—debtors as well as creditors—in proceeding to realise and distribute the assets of defaulters under the law as administered in bankruptcy, plainly indicates that the system has not worked efficiently, or in other words, that it does not satisfactorily fulfil the objects for which it was constituted. There is nearly a universal concurrence of opinion, that the law and practice require amendment: on the other hand, no one suggests that the principle upon which the Bankrupt Laws are framed is objectionable, or requires to be departed from. Under these circumstances, it is not too much to hope, from the practical character of the legislature and the country, that those improvements may be suggested and adopted in this branch of the law, during the approaching Session of Parliament, which will remove the indisposition now evinced to resort to the established tribunals, and that the same respect and confidence which happily attend the administration of justice in other Courts may be extended to the Court of Bankruptcy. Until these changes have been effected, there is no subject involving an amendment of the law, to which the attention of the profession can be more advantageously directed, because there is none in which the interests of the commercial and trading public are more seriously concerned.

DELAY IN THE BUSINESS OF THE COMMON LAW COURTS.

The Court of Queen's Bench has at last thrown out an intimation that it will adopt a rule which some three or four years since we had the honour to suggest for its adoption.[a] The suggestion was not then attended to, but every succeeding term has added to the proof of its necessity, as well as its justice. It has long been the subject of remark that, four days being given within which rules for new trials are to be moved, the motions are few and far between on the first two days, a little more numerous on the third, but that they come on in one flooding stream upon the fourth day. The Court is then compelled to postpone other business, and to allow the fifth, and in some instances the sixth and even the seventh days of term to be occupied with business which ought to have been disposed of within the first four days. This is a matter of inconvenience to everybody, for in business irregularity is always productive of inconvenience.

The remedy for this state of things was plain. We suggested that on the afternoon of the first, or at latest, by 10 o'clock in the morning of the second day of Term,

[a] See Leg. Obs. vol. 31, p. 325.

parties who intended to move for new trials, should put down their cases in a list, and that none not found there should be moved; and that from the sitting of the Court on the second day the list should be regularly proceeded with till all the motions were finished. The delay and irregularity consequent on the present system could do few people any good, and often did harm to a great many. The old practice was, however, adhered to till now, and now two cases have occurred that have created in the minds of the judges certain suspicions of abuse, which will probably suffice to put an end to it altogether. Two rules to bring before the Court cases, previously discussed at chambers, but which the judge there was unwilling to decide, were moved on Monday afternoon, just as the Court was about to rise. It being very late in the day, the Court allowed them to be moved on Tuesday morning. It then appeared that they were cases in which it was sought to set aside interlocutory judgments, and in which, by order of the Judge at Chambers, proceedings had been stayed till the fifth day of Term, that the opinion of the Court might be taken. The delay in coming to the Court awakened in the minds of Lord Denman and the other judges some suspicions, and their lordships plainly intimated that in future they would not grant a stay of proceedings beyond the first day of the Term; and Lord Denman, then recollecting the delay in moving for new trials, went further, and expressed his doubts whether that delay did not sometimes arise from unworthy purposes, spoke of an inquiry into the matter, and observed that the Court might in future hold the four day rule very strictly.

For the purposes of regularity, we are glad that the attention of the Court has been strongly drawn to this subject; but we are bound to say, that we do not participate in the suspicions by which the Judges seem at present to be influenced. That mere delay may sometimes be the object of a motion for a new trial we believe, and that such a motion will then be postponed to the last possible moment is certain; but in most cases the delay arises from that habit of procrastination in which we all occasionally indulge, and which, with many persons, nothing but actual necessity can efficiently repress.

Let the practice we have suggested be adopted, and this necessity will then beneficially exert its influence. Or, should it be said that the extreme closeness of the end of the Spring Circuit to the beginning of Term requires some different rule, we propose this:—That on the day before the Term, a list of all the cases to be moved from the first three Circuit towns of each Circuit shall be prepared; on the first day of Term, a list of cases from the next two towns; and that on the evening of the third of the four days, the cases from the last Circuit towns shall alone be permitted to be formed into a list and moved. The paper days appointed for the fifth and sixth days of Term would thus be pretty secure from invasion, and business would proceed with regularity and be dispatched with convenience.

POOR REMOVAL ACT.

11 & 12 Vict. c. 111.

This act passed on the 4th September, at the close of the last Session, and is entitled "An Act to amend an Act of the Tenth Year of her present Majesty, for amending the Laws relating to the Removal of the Poor."

1. By the 9 & 10 Vict. c. 66, it was enacted, that no person should be removed nor should any warrant be granted for the removal of any person from any parish in which such person should have resided for five years next before the application for the warrant: Provided, that the time during which such person should be a prisoner in a prison, or should be serving her Majesty as a soldier, marine, or sailor, or reside as an in-pensioner in Greenwich or Chelsea Hospitals, or should be confined in a lunatic asylum, or house duly licensed or hospital registered for the reception of lunatics, or as a patient in a hospital, or during which any such person should receive relief from any parish, or should be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bonâ fide* charitable gift, should for all purposes be excluded in the computation of time therein-before mentioned, and that the removal of a pauper lunatic to a lunatic asylum under the provisions of any act relating to the maintenance and care of pauper lunatics should not be deemed a removal within the meaning of that act: Provided, that whenever any person should have a wife or children having no other settlement than his or her own, such wife and children should be removable whenever he or she is removable, and should not be removable when he or she is not removable.

By reason of the generality of the expressions used in the last proviso doubts are entertained as to the meaning thereof, and it is desirable to remove such doubts: It is therefore enacted, that the said last proviso be repealed, and that instead thereof the following be enacted: Provided, that whenever any person should have a wife or children having no other

settlement than his or her own, such wife and children should be removable from any parish or place from which he or she would be removable, notwithstanding any provisions of the said recited act, and should not be removable from any parish or place from which he or she would not be removable by reason of any provision in the said recited act.

2. That nothing herein contained shall affect any appeal of which notice shall have been given before the passing of this act.

MANCHESTER LAW ASSOCIATION.

ANNUAL REPORT AND RESOLUTIONS.

THE Annual Meeting of this Association was held on Wednesday the 10th instant, at the Society's Rooms. Mr. *Grave*, the President of the past year, in the Chair.

Mr. *Thomas Taylor*, the Honorary Secretary, read the following Report:—

"The Committee of Management, in laying before the Members at the Annual Meeting a Report of their proceedings during the past year, have pleasure in stating that the number of members continues to increase, eight gentlemen having been admitted during the year, and two others are candidates for admission at the next ballot: two have retired, having left the profession, and one has been struck out of the list of members. No measures materially affecting the profession have passed into law during the last session of parliament, but one or two of great importance were introduced at a late period, for the purpose of being considered during the recess; these will be adverted to more especially hereafter.

"Your Committee prepared a memorial to the Lord Chancellor, praying that he would cause the sittings of the Court of Chancery to be held at Lincoln's Inn during term. This memorial having been signed by 79 firms and members, was forwarded to the proper quarter for presentation.

"Your Committee being convinced that the mode of conducting business in the Bankruptcy Court was extremely inconvenient, caused a memorial to be prepared, setting forth the various grounds of complaint, and suggesting the means of amendment. It was signed by the president on behalf of the Society, and forwarded to the Commissioners, with whom a deputation from your Committee had an interview, and received from their honours an expression of willingness and anxiety to consider the suggestions, and, as far as practicable, to carry out their views.

"Your Committee prepared and forwarded to the House of Commons, a petition against the salaries and compensation to certain officers of the Court of Chancery being charged upon the funds of the suitors of the said Court.

"Your Committee, on hearing that it was the intention of her Majesty's ministers to increase the Income Tax, considered that it was a fitting opportunity to urge upon the consideration of government the injustice of the Certificate Duty. A memorial strongly setting forth the proposed increase of the Income Tax, in addition to the Certificate Duty, was prepared for presentation to the Chancellor of the Exchequer, and a deputation was appointed to obtain an interview with the right hon. gentleman, to take such steps as they might think desirable to secure the object they had in view. The deputation, accompanied by many members of parliament, and by members of the Council of the Incorporated Law Society, had an interview with the Chancellor of the Exchequer, who promised to give the matter his best attention. The bill proposing to increase the Income Tax was, however, afterwards withdrawn; but your Committee have pleasure in stating, that from the exertions of the Metropolitan and Provincial Law Societies Association, and the very numerous promises of support received by that society from members of parliament, they have reason to hope that an impost so partial and unjust as the Certificate Duty will ere long be abolished.

"Lord Brougham having introduced into the House of Lords, and Mr. Bouverie and Mr. Baines into the House of Commons, two bills on the important subject of Bankruptcy, your Committee immediately requested such of their members as were best acquainted with that law, to consider both these bills, with the view of suggesting such alterations and amendments, as would place the Law of Debtor and Creditor on a better footing. The Sub-committee have diligently pursued their labours, and their report, which must necessarily be an extended one, will be ready in a short period. When presented and adopted, it is intended to forward copies thereof to the Manchester Chamber of Commerce and Commercial Association, and obtain their co-operation on the subject; and your Committee trust that before long a bill for the improvement of the Law of Bankruptcy, approved of by the profession and mercantile community of this city and neighbourhood, will be ready for introduction into the House of Commons.

"The attention of your Committee has been directed to the difficulties experienced by solicitors practising in the Courts of Record for the boroughs of Manchester and Salford, in many cases, in which, owing to the peculiar constitution of these Courts, suitors are prevented proceeding in either, and consequently compelled to incur great expense in the recovery of their claims. Your Committee, considering the matter one of much importance to the inhabitants of these boroughs, appointed a Sub-committee, who have reported that the remedy to the existing objections is of easy attainment. Their views have been submitted to the judges and registrars of the two Courts, and your Committee hope that steps will be taken to give the public all the advantages which these Courts are calculated to afford.

"Several questions on points of practice have been submitted to your Committee during the

past year. Your Committee having been informed that Mr. Hunt, an accountant in this town, had been in the habit of preparing assignments for the benefit of creditors, without employing a solicitor, caused the matter to be strictly investigated; and, subsequently, by an examination in the Court of Bankruptcy, instituted by the assignees of a bankrupt, the charge, in one instance, was distinctly made out, and on that occasion the Chief Commissioner severely censured Mr. Hunt for his illegal and highly improper conduct,

"Your Committee having been informed that a warrant had been issued against Samuel Grantham Anderton, an attorney's clerk, (but who, in fact, carried on business as an attorney,) for obtaining money by false pretences, caused a Sub-committee to be appointed to watch a prosecution instituted against him, and to take such steps as they might deem desirable. The Sub-committee proceeded to Liverpool, and had several consultations with counsel and the prosecutor's attorney. The result is, that Anderton has been convicted, and sentenced to two years' imprisonment, with hard labour.

"Your Committee, in thus carrying into effect one of the most important, at the same time unpleasant objects of the association, cannot avoid expressing a hope that the result of this prosecution, and the firm determination so often expressed by this association, to do all in their power to check and punish all malpractices and abuses in the profession, will deter other persons from pursuing similar courses."

It was then resolved that the report be received, approved, and entered on the minutes; and that the same be printed, and a copy forwarded to each member.

Mr. Whitlow was elected President and Treasurer, and Messrs. Thomas Taylor and Thomas Lever Rushton, of Bolton, Vice-Presidents, for the ensuing year.

It was moved by the *President*, and seconded by Mr. *Whitlow*,—

"That the Manchester Law Association receives with deep regret the resignation of Thomas Taylor, Esq., its efficient and indefatigable Honorary Secretary for upwards of ten years, and tenders to him its best thanks for the zeal, ability, and courtesy with which he has, during so long a period, discharged the important and onerous duties of his high office, whereby he has not only gained the confidence and esteem of the members, but has raised the character of the association to a proud eminence."

Mr. James Street was elected Secretary, and the Committee was appointed for the ensuing year.

The members afterwards dined together, and we shall give an early report of their speeches.

NOTICES OF NEW BOOKS.

A Treatise on the Law of Marine Insurance and Average, with References to the American Cases and the later Continental Authorities. By JOSEPH ARNOULD, Esq., of the Middle Temple, Barrister-at-Law, and late Fellow of Wadham College, Oxford. London: Benning & Co. 1848. Pp. 1502.

CONSIDERING the national importance of the Law of Marine Insurance, and its peculiar and distinctive qualities as established in these kingdoms, it seems at first sight somewhat remarkable that it should not have attracted the attention of a greater number of legal treatise writers, and that so few living members of the profession should have been found ambitious to associate their names with a branch of the law intimately affecting the great commercial and maritime interests of the country. The law on this subject, is for the most part made by the Judges, who have moulded and adapted it to the varying exigencies of society. It has been in a very slight degree controlled or modified by legislative enactments, and for this reason, perhaps, whilst it depends more upon principles than other branches of jurisprudence, the application of those principles is more frequently influenced by subtle and refined distinctions, which occasionally embarrass the merchant as well as the lawyer, and justify, if they did not suggest, the question pointedly put by Mr. Arnould, in his preface:—"Why England should still continue the only mercantile state of civilized Europe without a code of Shipping and Insurance Law?" We concur with him in thinking that there is no subject within the range of mercantile law, in which the materials for legislation more abundantly exist, and that those entrusted with the work of codification might safely dispense with all previous inquiry as to what the law ought to be, and confine themselves to a clear and concise statement of what it actually is.

Whoever shall hereafter undertake this task, will find much of the difficulty removed, and the labour rendered easy, by the diligence with which the materials are collected, and the masterly manner in which the subject is treated, in the volumes now lying before us. Mr. Arnould has not merely collected, analysed, and digested the decisions of our own Courts, but he has illustrated them by references to the maritime laws of Continental Europe and the works of eminent foreign jurists. The most

valuable portion of the illustrations derived from foreign sources, however, is undoubtedly that drawn from American text writers and reporters. The wide range of sea coast included in the American territory, and the spirit of commercial enterprise which the inhabitants of that great nation seem to have borrowed from the mother country, give a practical value to their application of the principles propounded in the judgments of a Mansfield and an Ellenborough, wanting in the decisions of other tribunals, however learned and elevated. The copious references to, and examination of, American authorities, is a peculiar and distinguishing feature in the present treatise; but it is only one of its merits. To learning profound, accurate, and extensive, the author has united a capacity for scientific arrangement, and a power of lucid and concise exposition, which, independent of the intrinsic importance of the subject, causes us to consider this work as a valuable accession to our legal literature.

Our limits only permit us to state generally, that Mr. Arnould divides his treatise into four distinct parts. The first relates to the nature, formation, and subject-matter of the contract of Marine Insurance itself. The second relates to those matters which render the contract either void or inoperative, such as misrepresentation, concealment, breach of express and implied warranties, and illegality of the risk. In the third part, the rights and duties of the parties to the contract, in case of loss, are fully discussed. And the fourth part, treats of the modes of procedure by which the rights and duties of the parties may be enforced.

It is difficult to select from a work of such magnitude, in which methodical arrangement is combined with general completeness, any portion that would enable our readers to form an idea of the mode in which a particular part of the subject is treated. As tests of the author's ability in discussing and expounding clearly and felicitously subjects of the greatest difficulty, we should, perhaps, refer to the sections in which he has treated of the doctrine of absolute and constructive total loss and abandonment. We prefer, however, as more popular, to present our readers with an extract from the introductory chapter, designed expressly for students, in which Mr. Arnould gives the following succinct sketch of the mode in which marine policies are practically effected and payment of losses usually adjusted, when the insurance is effected with a public company, or with private underwriters at Lloyd's. Although every insurance broker is probably familiar with the course of business described in the following statement, every lawyer is not; and as it affords information upon a matter concerning which it is extremely desirable that professional men should be accurately acquainted, we make no apology for printing the passage at length :—

"It is very rarely that the party who wishes to protect his property by a contract of Marine Insurance ever effects the policy himself: in nine cases out of ten, policies of Marine Insurance are effected by *insurance brokers*, and the first step generally taken by a party wishing to insure is to communicate, either by word or writing, to the insurance broker a statement of the different particulars of the insurance he wishes to effect; such as the name of the ship and master (if known to him at the time), the description of the property, the termini of the voyage (*i. e.* the ports where he wishes the adventure to begin and end), the sum he intends to insure, the rate of premium he is disposed to pay, and generally all such information as may enable the broker to satisfy the underwriter as to the nature of the risk and the amount of the insurance.

"On receiving this information, the broker proceeds to procure the insurance to be effected, either with some of the public insurance companies, or with the private underwriters meeting at Lloyd's. If the broker determines to insure with a company, he has merely to go to the manager of the company, and state the particulars of the risk to be insured; the rate of premium at which the company consent to take the risk is first agreed upon; and the manager then writes out a memorandum for the policy, shortly specifying the leading particulars of the adventure, and the rate of premium, which the broker signs, and the party is thus *provisionally* insured; the company then fills up a stamped policy according to the particulars disclosed to them, which is generally ready for delivery in four or five days; the insurance is then legally complete, and the policy is handed over to the broker, who either transmits it at once to his employer, or holds it himself.

"If the broker, on the other hand, prefers effecting the insurance at Lloyd's, the course pursued is somewhat different; it this case, the broker himself procures a blank form of policy, duly stamped, which he fills up with the particulars of the risk, and inserts therein such an amount of premium as his knowledge of the actual state of insurance business leads him to believe that the underwriters would be willing to take as the price of the risk he is commissioned to insure. The stamped policy, thus filled up, he takes to Lloyd's rooms, where all the private underwriters meet, and there hands it about among the different under-

writers, to whom he is known, who either accept or reject it, according to their own views of the nature of the risk, or the state of their account at the time; the policy is thus handed about, until the aggregate amount subscribed by the different underwriters equals the whole sum for which it is desired that the insurance shall be effected.

"By the general practice in this country, the *premium*, which in theory ought to be, and indeed on the face of the policy is acknowledged to have been, *paid at once to the underwriter on his subscription of the policy*, is never in fact paid to him at that time, but is passed into an account kept between him and the broker, in which the underwriter enters the sum which *ought* to have been paid him by way of premium to the debit of the broker, and in case of a loss occurring, only pays to the assured the balance which remains due after deducting the sum due for premium from the amount which he (the underwriter) has to pay as his proportional share of the loss.

"This is supposing only a single insurance transaction to be pending between the same broker and the same underwriter: in actual practice there are generally several such transactions, and in that case, by the practice of Lloyd's, all the sums due from the same broker to the same underwriter for premiums are set off, in the mutual account kept between them, against the sums due from the underwriter to the broker for losses, and no cash passes between them unless it is found, on what is called the adjustment, or making up a claim for any particular loss, that the underwriter owes the broker more for losses than the broker owes him for premiums; in such case, the underwriter pays him the balance of the loss by a bill at three months: but very generally no money payment at all takes place between the broker and underwriter, till the general settlement of accounts between them, on the 31st of December in every year.

"The broker keeps the same kind of account with the merchant or shipowner who employs him, and in case of loss, either pays the amount by bill at three months, or lets it run on in the general account, against the sums he has advanced on account of his employer for premiums, &c."

Our limits will not permit us to extract any other passage, sufficiently complete in itself to render it intelligible without reference to the body of the work, and which would afford even a tolerably accurate idea of the style of the author, and his mode of discussing the principles governing this branch of the law in their relation to varied and complicated circumstances. Upon this point we shall only observe, that Mr. Arnould's book affords a striking illustration of a maxim which, in our capacity of reviewers, we have ventured, more than once, to enforce, namely, that perfect clearness and intelligibility are not incompatible with the most elaborate and profound performances of legal authorship.

Mr. Arnould has entered fully into the numerous questions arising upon the pleadings and evidence in actions on marine policies. We could have wished that he had added, by way of appendix, a few forms of declaration and pleas, to illustrate his text. It was probably supposed, however, that this would inconveniently increase the bulk of the work, which is published in two moderately sized volumes, but is paged and arranged to admit of its being bound up in a single volume. As a book of reference, the work is rendered more complete by a marginal abstract, and a carefully-executed Index and Table of Contents. To many of our readers, perhaps, it may be a matter of subordinate consideration, but in our sight (not quite so good as it was twenty years ago) we confess it is an additional recommendation, that the work is printed in a clear bold type. With these observations, we commend the Treatise on Marine Insurance to the attention of our readers, satisfied that it only requires to be known to insure a place in the library of every scientific and practical lawyer.

THE SERJEANTS' DUMB DAY.

ATTORNEYS HEARD AS ADVOCATES.

It will be observed from the following extract from Lord Guildford's Life by his brother, Roger North, vol. 1, p. 195, that it was the usage of the King's Bench at the side-bar, and of the Common Pleas, to hear attorneys on matters of form and practice.

"There was an incident, that happened not long after his Lordship came into the place of Chief in that Court, which, though in itself, and in the end of it, ridiculous, yet, being an affront to the Court, and in particular to the Lord Chief Justice, and by the whole bar of Serjeants, all in a lump together, ought to be related, as I shall do, really as it was acted by them. It hath been the usage of the King's Bench, at the side-bar below in the Hall, and of the Common Pleas, in the Chamber within the Treasury, to hear attorneys and young counsel, that came to move them about matters of form and practice. His Lordship had a young brother, (Hon. Roger North,) who was of the profession of the law. He was newly called to the Bar, and had little to do in the King's Bench; but the attorneys of the Common Pleas often retained him to move for them, in the Treasury, such matters as were proper there, and what they might have moved themselves. But however agreeable this kind

of practice was to a novitiate, it was not worthy the observation it had; for, once or twice a week was the utmost calculate of these motions. But the serjeants thought that method was, or might become, prejudicial to them; who had a monopoly of the Bar, and would have no water to go by their mill, and supposed it was high time to put a stop to such beginnings, for fear it might grow worse. But the doubt was, how they should signify their resentment, so as to be effectually remedial. At length they agreed, for one day, to make no motions at all; and opportunity would fall for showing the reason how the Court came to have no business. When the Court (on this dumb day, as it was called,) was sat, the Chief Justice gave the usual sign to the eldest serjeant to move. He bowed, and had nothing to move; so the next and the next, from end to end of the Bar. The Chief seeing this, said, 'Brothers, I think we must rise; here is no business.' Then an attorney steps forward, and called to a serjeant to make his motion; and after that turned to the Court, and said, that he had given the serjeant his fee and instructions over night, to move for him, and desired he might do it. But profound silence still. The Chief looked about and asked, 'What was the matter?' An attorney that stood by, very modestly said, 'That he feared the serjeants took it ill that motions were made in the Treasury.' Then the Chief Justice scented the whole matter, and, 'Brothers,' said he, 'I think a very great affront is offered to us, which we ought, for the dignity of the Court, to resent. But that we may do nothing too suddenly, but take consideration at full leisure, and maturely, let us now rise, and to-morrow morning give order as becomes us. And do you, attorneys, come all here to-morrow, and care shall be taken for your dispatch, and, rather than fail, we will hear you or your clients, or the barristers-at-law, or any person that thinks fit to appear in business, that the law may have its course.' And so the Court rose. This was like thunder to the serjeants, and they fell to quarrelling one with the other, about being the cause of this great evil they had brought upon themselves; for none of them imagined it would have had such a turn as this was, that shaked, what was the paladium of the coif, the sole practice there. In the afternoon they attended the Chief and the other Judges of the Court, and in great humility owned their fault, and begged pardon, and that no further notice might be taken of it; and they would be careful not to give the like offence for the future. The Chief told them, that the offence was in public, and in the face of the Court, and they must make their recognitions there next morning, and in such a manner as the greatness of their offence demanded; and then they should hear what the Court would say to them. Accordingly they did; and the Chief first, and then, the rest in order, gave them a formal chiding, with acrimony enough; all which, with dejected countenances, they were bound to hear. When this discipline was over, the Chief pointed to one to move; which he did, (as they said,) more like one crying than speaking: and so ended the comedy, as it was acted in Westminster Hall, called the Dumb Day."

LAW AMENDMENT SOCIETY.

GENERAL MEETING, DEC. 11TH, 1848.

M. D. Hill, Esq., Q.C., in the Chair.

THE Report of the Committee on Equity on the following reference was further considered.

"To consider the state of the Law respecting the confinement of persons alleged to be Lunatics."

It was agreed that the Report should be taken into further consideration at a Special Meeting to be held on Thursday the 21st inst., at 8 o'clock in the evening precisely.

GENERAL MEETING, DEC. 21ST, 1848.

Mr. Serjeant Manning, Q.S., in the Chair.

The Report of the Committee on Equity on the Law relating to the confinement of persons alleged to be Lunatics was further considered.

It was agreed that the Report should be referred back to the Committee to re-consider the same and make such arrangements as they might think necessary.

Notices of Motion.

1. That the following reference be made to a Special Committee to be appointed for the purpose.

"To consider what improvements, if any, may be made in the present system of Law Reporting, and generally on the mode of publication of Law Works."

2. A further Report of the Committee on Equity on the following reference will be presented.

"That the Committee be requested to direct their valuable labours to the consideration of whether any further alterations can be made in the whole system of the jurisdiction, practice, and constitution of the Masters and Masters' Offices, with a view to obtain a more speedy and cheaper administration of justice in the Court of Chancery."

[The profession will rejoice to see that further inquiry is about to be instituted into both these important subjects—the system of *Law Reporting*, and the practice in the *Masters' Offices* in Chancery: on which we shall have much to say hereafter.—ED.]

CANDIDATES WHO PASSED THE EXAMINATION.

Michaelmas Term, 1848.

Name of Candidates.	*To whom Articled, Assigned, &c.*
Allen, Charles	William Kinsey, 20, Bloomsbury-square
Andrew, Jon	William Martin Wilkinson, 44, Lincoln's-inn-fields
Andrews, Stephen Wilson	Francis Thirkill White, Boston.
Arkcoll, Francis William	David Henry Stone, Poultry
Armfield, George Mander	Richard Henry Tarleton, New-street, Birmingham
Ash, Thomas	Stephen Holman, Glastonbury
Banfield, John	Richard Millett, Penzance
Baxter, Stafford Squire	Stafford Stratton Baxter, Atherstone
Bishop, Paul John	John Bishop, 23, New Bridge-street, Blackfriars
Bladon, William Septimus	William Tristram Keightley, Liverpool
Blain, Thomas Goad	William Gandy Bateson, 7, Brunswick-street, Liverpool
Blake, Alfred Godby	Frederic Buckle, Wellington; James Joseph Blake, Blackfriars-road
Blake, Frederic. John	John Carlon, Palace-chambers, St. James's-street
Bonsall, Isaac	John George William Bonsall, Mancynlleth
Botrill, George	Robert William Fox, Lutterworth
Brodhurst, Alfred	Charles Pearson, New Sleaford, now of Belmont, near Feversham, Kent
Brown, James Waton	Alfred Rooker, Plymouth
Brown, William	George Edward Baker, Warwick
Burrell, William Beckett	John Scholey, Wakefield
Compton, Robert Taylor	James Pitts, Exeter
Chubb, Thomas Henry	Henry Richards, Croydon; Thomas Chubb, Malmesbury
Cobb, Henry William	James Cobb, Salisbury
Coe, William jun.	Thomas Magnus Cattlin, 39, Ely-place, Holborn
Collard, John Denne	Edward Barron, late of 29, Bloomsbury-square; Wm. Henry Cullen, 57, High-street, Poplar, and Canterbury
Collins, Charles Atkins	Robert Cook, Bath
Condy, George Thomas	Henry William Bull, 25, Ely-place, Holborn.; John Wickham Flower, 61, Bread-street, City
Cookson, John Fowler	William Dickson, Preston
Corke, Charles William	Henry Sidney Wasbrough, 11, Corn-street, Bristol
Darbishire, Rt. Dukinfield, B. A.	Samuel Dukinfield Darbishire, Manchester
Davies, William	William Rees, Spring-gardens, Haverfordwest
Deighton, Richard Scott	Thomas Kirk, 10, Symond's-inn, Chancery-lane
Druce, George Frederick	John Walsh, Oxford
Durant, John Frederick	John Durant, Poole
Evans, Worthington	Morris Charles Jones, Liverpool
Fisher, Robert Blake Horman	Samuel Fisher, Merchant Tailors'-hall, Threadneedle-street
Foster, Robert Norman	Lewis Jacobs, 6, Crosby-square
Forwood, Thomas Weech Jonas	Thomas Leigh Teale Rendall, Tiverton
Galland, Robert	John Earnshaw, Kingston-upon-Hull
Gamon, Charles	Alexander Thompson, late of Manchester; Richard Claye, Manchester.
Gillard, Peter	William Cholwich Haley, Kingsbridge
Godfrey, John	John Styles, Shepton Mallet; J. B. Cracknell, Paulton; Ed. Govett, Upper North-place, Gray's-inn-road; P. F. Curry, Liverpool.
Grain, Frederick	George Joseph Twiss, Cambridge
Grazebrook, Henry Goodwin	Durley Grazebrook, Chertsey
Gregson, Robert Shuttleworth	G. J. Ottaway, Staplehurst; John Gregson, Angel-court, City
Hammonds, Peregrine	William Tanner, jun., Shannon-court, Bristol
Hancock, Theodore	John Bailey, Wedmore
Hanmer, Thomas	William Wybergh How, Shrewsbury; R. N. Bennett, Lincoln's-inn
Harrow, Robert	Isaac Warner, Winchester
Hedger, Edwin	William Robinson, Charterhouse-square
Henderson, Joseph Quarme	Edward Jenner Murray, 7, Whitehall-place
Hicks, Christopher, jun.	Henry Hicks, Shrewsbury
Hill, Walter	Robert Pool, Southam
Hindle, Henry	John Hindle, Liverpool; Edward Fred. Burton, 7, Chancery-lane
Hoole, John	Thomas Morecroft, Liverpool.
Humphrys, George	James John Leman, Bristol
Hunt, William	William Hurst, Nottingham.
Hunt, William	Daniel James Lee, 4, Bedford-row
Huxham, John Brown Cozo	John Huxham, Bishopsteignton; John Coverdale, Bedford-row
Jackson, John	Benjamin Blaydes Thompson, Tadcaster
Jaques, William	John Jaques, 8, Ely-place, Holborn; Wm. Ferguson Holroyd, Halifax
Jenkyn, Osborn	James Jenkyn, 11, John-street, Adelphi
Jennings, Hugh	Samuel Fozard Harrison, Wakefield
Johnson, Marcus Henry	J. M. Browne, 2, Hind-st., Manch., sq.; R. E. Johnson, Gt. Winch.-st.
Johnston, Thomas	Lawrence Harrison, Penrith
Jones, Charles Edward	John Adolphus Young, St. Mildred's-court
Jones, John	Already admitted in County Palatine at Lancaster

Kendall, John	John Daw, Exeter
Langdon, William Spicer	William Sparks, Crewkerne
Lawson, John Mair	John Nicholetts, South Petherton; Henry Hill, 10, Great James-street, Bedford-row
Lewin, Spencer Robert	Henry Lewin, 4, Ulster-place, Regent's-park, and 8, St. Main's-place
Lightfoot, Alfred	James Peachey, 17, Salisbury-square
Little, George Hutchinson	David Gray, 20, Lincoln's-inn-fields; Charles Clarke, ditto and further assigned to Joseph Woodcock, ditto
Looker, John Billingsley	John Looker, Oxford
Lowndes, Edward Spencer	William Gandy Bateson, Liverpool
Lucas, Colston	Henry Abbott, Ashton
Mason, Joseph	William Jackman, York
Merriman, George Frederick	Benjamin Field, 4, Lincoln's-inn-fields
Middleton, William Tym	John Tym Middleton, Stone
Morris, John Weston	Morris and Co., late of 7, Bank-chambers, now of Morgate-street-chambers
Nelson, Thomas James	William Lowless, 3, Hatton-court, Threadneedle-street
Nicholson, Frederick William	Richard Hutchinson, Nettleship, 15, Clifford's-inn; Alred Jones, 15, Size-lane
Nisbett, Archibald	Thomas Graham, 1 and 3, Mitre-court-chambers
Oates, Joseph Henry, jun.	Robert Lawson Ford, Leeds
Owen, Thomas	William Jones, 2, St. Mildred's-court
Paddock George, jun.	William Ward, Burslem; John Ward, Burslem
Palmer, Charles Edward	William Palmer, Doncaster
Parker, Thomas	Peter Ellingthorpe, Blackburn
Pattinson, Thomas	Samuel Brabner, Liverpool; Middleton Hewitson, Kirkby Stephen
Phillips, Thomas, jun.	Thomas Phillips, sen., Plymouth
Pickett, Henry	Broome Pinniger, Newbury
Poole, Edward	William Savage Poole, Kenilworth
Robinson, Alfred Murray	Alfred Robinson, 17, Orchard-street
Rogers, Arundel	Thomas Rogers, jun., Reading; William Kingdon, 13, Bedford-row
Rolt, Daniel Brunsdon	Edwin Wilkins Field, 41, Bedford-row
Rowley, Lawrence Pemberton	John Rawlins, Birmingham
Saunders, Thos. Jas. Goulding	Thomas Saunders, Guildhall
Savage, Robert, jun.	Francis Broderip, New-square, Lincoln's-inn
Senior, Thomas	Henry Brown, Wakefield
Sharpe, Gillies Payne, B. A.	Samuel Steward, 59, Lincoln's-inn-fields
Sheard, Henry	Thomas Parker, 18, St. Paul's-church-yard
Shelly, Edward Henry	Bohun and Rix, Beccles
Smith, Charles	Thomas Bentley Hudson, 16, Finsbury-place, South; Thomas Baker, 34, Lime-street
Smith, George Moore	John Peed, Whittlesey
Stark, Alexander	William Galsworthy, 11, Poultry; Nicholas Bennett, 7, Furnival's-inn
Stark, Robert Mozley	John Moore Janson, Wakefield
Stevenson, Anthony	George Kennet Pollock, 19, Essex-street, Strand
Stokes, John William Noble	Charles Buck, late of Preston; William Dickson, Preston
Strong, Sydney Gore Robert	Frederic Page Keeling, Colchester; Keith Barnes, 7, Spring-gardens
Taylor, Richard James	Edward Pritchard, Hereford; Jas. Robinson, Queen-street-place, City
Thursfield, John Hunt	Charles Hunt, Wednesbury
Tilsley, Edward Hugh	Thomas Bristowe Young, New-inn
Tomlin, George Taddy	George Furley, Canterbury
Toynbee, Samuel	John Boyfield Millington, Boston
Turner, James Augustus	Abraham Turner, Taunton; Thomas Henry Strangways, 11, King's-road, Gray's-inn
Tylee, Henry	William Henry Moberly, Southampton
Vallotton, Theodore James	Francis Philip Hooper, 11, Sackville-street, Piccadilly
Varley, Alphonso Rowland	Matthew Dawes, Bolton-le-Moors; Charles Fletcher Skirrow, 1, Bedford-row
Walters, Laundy	Stephen Walters, 36, Basinghall-street
Ward, Frank Cavendish	Peter Haydock, Preston; Robert George Clarke, 43, Craven-street, Strand
Warner, Charles	George Lamb, Basingstoke and Odiham; William Phelps, 14, Red-lion-square
Warrall, Frank	John Roger Rush, 18, Austin Friars
Warren, Robert, jun.	William Mark Fladgate, 43, Craven-street, Strand
Watkins, Thomas Powell	Charles Bedford, Worcester
Williams, George	Edward Clark, Bristol
Williamson, James jun.	James Williamson, 10, Great James-street, Bedford-row
Wilson, Thomas	Joseph Briggs Dickson, Preston; Thomas Wright Nelson, Gresham-place, Lombard-street
Winterbotham, Lindsey, William	Joshua Thomas, Tewkesbury; Richard Mullings, Cirencester
Woodley, Charles Henry	John Whidborne, Teignmouth
Wright, Joseph	Thomas Blackwell Mason, Doncaster

NOTES OF THE WEEK.

NISI PRIUS SITTINGS.

In order to prevent an accumulation of the arrear of Nisi Prius Causes, some new arrangements have been made in the Court of Queen's Bench for the dispatch of this branch of business. The first sitting in Term commenced on the first instead of the second day of Term, which has been for some years the practice. Instead of commencing the Nisi Prius business at 11 o'clock, it has also been determined that it should begin daily during Term at half-past 10, and as the Court does not sit before 10 o'clock in Term, there is only one-half hour given, by the judge presiding in the Bail Court, to the hearing of motions and rules. The effect of this arrangement is, that until the Nisi Prius Sittings in Term have concluded, the judge sitting in the Bail Court has no opportunity of disposing of any considerable portion of the regular Term business, and by that means diminishing the pressure on the full Court. In both the Queen's Bench and Exchequer, the list of Causes for the present Term are unusually large. In the former Court there were 94 causes set down for the Middlesex sittings in Term, and in the Exchequer 100 causes.

ANTICIPATED APPOINTMENT OF QUEEN'S COUNSEL.

We have not been able to learn that the Lord Chancellor has yet notified officially to any one, upon whom he proposes to confer the dignity of Queen's Counsel. We understand, there are now no less than 25 applicants for the honour.

NEW PRACTICE AS TO DATES IN AFFIDAVITS.

It may be material to inform the practitioners in the Common Law Courts, that in affidavits, specifying the dates of facts or service of process, it is required by the judges that *the year of our Lord* should be specified instead of a given day *instant*. An affidavit speaking of something done on the 5th *instant* is informal, and cannot be read if objected to, because at the time of using the expression, the jurat being written afterwards, no *year* is mentioned. See p. 220, *post*.

PROMOTIONS AND APPOINTMENTS.

Mr. Boothby, of the Northern Circuit, has been appointed Recorder of Pontefract.

Mr. Crowder, of the Western Circuit, has been elected M. P. for the borough of Liskeard, in the place of Charles Buller, Esq., Q. C., deceased.

ADMISSION OF SOLICITORS.

The Master of the Rolls has appointed *Tuesday*, January 30th, at the Rolls Court, Chancery Lane, at three in the afternoon, for swearing Solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission, or his Certificate of Practice for the current year, at the Secretary's Office, Rolls Yard, Chancery Lane, on or before *Monday*, 29th January.

THE COURTS OF EQUITY.

It is supposed the Lord Chancellor intends to adhere to his intention of holding the Sittings of the Equity Courts at Westminster Hall, when Parliament assembles in the month of February, but it has not yet been announced on what day the Courts will discontinue their sittings at Lincoln's Inn.

RECENT DECISIONS IN THE SUPERIOR COURTS AND SHORT NOTES OF CASES.

Lord Chancellor.

Re Eminson, Re 6 & 7 Vict. c. 73, (Solicitors' Act,) Exparte the Ambergate, Nottingham, and Boston, and Eastern Junction Railway Company.

TAXATION OF SOLICITOR'S BILL BY THIRD PARTIES AFTER PAYMENT.

Semble, *that under 6 & 7 Vict. c. 73, (ss. 37, 38, & 41,) it is necessary to show special circumstances when third parties apply for an order to tax a solicitor's bill after it has been paid.*

This appeal arose out of a petition presented by the above-named company in the matter of Richard Eminson, a solicitor of the Court, and in the matter of the above-mentioned act. The following are the circumstances of the case:—

In March, 1847, the company took possession unlawfully of Captain Eminson's land, and disputes and differences consequently arose between the parties. Captain Eminson gave notice of his desire to refer the matters to arbitration, but the company repudiated all responsibibility for damage done to the land by their contractor. On the 18th of June, the

captain gave a second notice of his desire to refer, but this being considered an error in practice, it was on the 25th withdrawn. On the 26th, two of the directors served notice of the company's desire to refer, and on July 31, the parties met to arrange the sale and purchase of the land. On the 9th of August, the referees prepared the minutes of their agreement, by the 4th article of which it was stipulated that the company should pay all the costs incurred by the captain previously to that time, and also the costs of the reference. On the 27th, Mr. R. Eminson (the captain's solicitor) prepared a formal agreement in accordance with the minutes, and therein recited that the amount of his bill of costs was 68*l.* 1*s.* 1*d.* This sum was afterwards corrected, and stated to be 70*l.* 6*s.* 8*d.* The solicitors of the company declined to adopt the agreement, considering that the minutes would be sufficient, and they demanded the particulars of the bill of costs. These were furnished on the 11th of September, and being objected to generally by the company's solicitors, a long correspondence ensued in respect of them. In December, one of the solicitors of the company had a personal interview with Mr. Eminson, and after objecting specifically to nearly one-half of the items, offered to pay 50*l.* in full. On the 23rd of December, Mr. Eminson wrote a letter, in which, after referring to this interview, and declining to accede to the proposed offer, he thus proceeded:—"However, as I find you remark that the company ought not to be made to pay for errors of practice, I will myself take off 1*l.* 1*s.*, the charge of preparing the second notice of desire to refer. With regard to the withdrawal of it subsequently, these charges I shall retain, inasmuch as they became necessary in consequence of the denial of the directors of all liability for damages." On the 8th May, 1848, Mr. Eminson wrote again to the company's solicitors for an immediate settlement, and stated that interest would be charged on the amount of the costs, if not paid at the end of a week. On the 13th, Mr. Eminson received payment of the bill from his client Captain Eminson. Two of the directors of the company and a local agent called upon Mr. Eminson in the following June, and being then told by him that the captain had paid the bill, and expected the company to repay it, they requested Mr. Eminson to induce the captain to make certain deductions. The latter declined to do so, and on the 7th of July the company presented a petition to tax the bill. The petition specified several items as being extravagant and unreasonable, and was opposed on behalf of Mr. Eminson. On the 8th of August, the Vice-Chancellor of England made the usual order for taxation, upon the grounds, as it was alleged in the argument, that it was not necessary for third parties to show special circumstances to entitle them to tax a bill after payment. Against this order Mr. Eminson now appealed.

Mr. *Rolt* and Mr. *Glasse* contended, that the company ought to have applied for an *ex-parte* order before payment, and argued that it was necessary to show special circumstances in support of the petition. *Re Carew*, 8 Beav. 150. None had been shown in the present case. Mere overcharge was not a special circumstance. *Re Drake*, ibid, p. 123. Reference was also made to *Re Thompson*, 9 Jur. 169, and *Re Evans*, 31 Leg. Obs. 156.

The *Lord Chancellor*, without calling upon the other side, said he concurred with the argument of the learned counsel, but thought that sufficient appeared from the correspondence to support the prayer of the petition and the order of the Vice-Chancellor. His Lordship therefore dismissed the appeal with costs.

Lee v. *Melendez*. Jan. 11, 1849.

NE EXEAT REGNO.

Upon finding sureties to a sufficient amount, the defendant was allowed to proceed to Peru and stay 12 *months, notwithstanding a writ of* ne exeat regno *against him.*

This was an appeal from the Vice-Chancellor of England for the modification of a writ of *ne exeat regno*. The suit was instituted for an account of the transactions of a partnership. By the affidavit of the plaintiff, it appeared that the defendant, on the balance of the accounts, would be indebted to him in 1,000*l.*, and that the defendant was about to leave the country. The object of the defendant, who was a native of Peru, was to proceed to California, and the plaintiff was not desirous of preventing him, but only required proper security.

Rolt appeared for the appellant; *Cooper* and *Lovell* for the respondent.

The *Lord Chancellor* decided, that the writ of *ne exeat regno* should remain untouched; but that the defendant should be at liberty to proceed to Peru, and be absent for 12 months, upon finding sureties in the sum of 1,000*l.*, to be approved by the Master. As the Vice-Chancellor should have made this order, each party would pay his own costs of the appeal, but in the Court below the defendant must pay the costs of the plaintiff.

Jan. 11.—*In re Reaveley, In re North of England Joint-Stock Bank*—Appeal dismissed with costs.

— 11.—*In re Prosser's Patent*—Petition to be heard on the 22nd.

— 11, 13.—*Davis and wife* v. *Kingsford*—Stand over for a week.

— 15.—*Stewart* v. *Forbes*—Stand over for plaintiff to consider whether he would proceed with his petition under terms.

— 15, 16.—*Attorney-General* v. *Wilson*; *In re Lady Hewley's Charity*—Stand over to the 19th.

— 16, 17.—*Dickson* v. *The Queen*—*Cur. ad. vult.*

— 13, 17.—*Ward* v. *Ward*—Judgment to be delivered on the 20th.

— 17.—*Attorney-General* v. *Strange*; *Prince Albert* v. *Strange*—Appeal motion to be heard on the 25th.

Jan. 17.—*Lord Brooke* v. *Lord Warwick*—Cur. ad. vult.

— 17.—*Battershall* v. *Bishop of Winchester*—Decree of Court below reversed, and bill dismissed with costs.

Rolls Court.

Hargrave v. *Hargrave.* Jan. 11 and 12, 1849.

ILLEGITIMACY.—EXAMINATION OF NEXT FRIEND.

Where the evidence in an issue as to the legitimacy of the infant plaintiff, was imperfect and conflicting, the Court granted a new trial, but refused to order that the next friend should be examined as a witness.

THIS was a petition by the next friend of an infant, that the next friend might be examined at the trial of the issue as to the plaintiff's legitimacy. The plaintiff was born in Oct. 1836, and on the death of his father in 1840, became entitled, provided his legitimacy was proved, to take jointly with his elder brother, about whose legitimacy there was no question. It appeared that the husband and wife had separated, he living sometimes at Calais, sometimes at Boulogne. An allegation of his having been in London at the beginning of the year 1836, had not been established clearly and fully; there was conflicting evidence as to his having been seen daily in Boulogne. Neither was the proof of the non-access to the wife direct and decisive.

G. Turner, Channell, S. L., and *Kyle*, appeared for the plaintiff; *Glasse*, contrà.

The *Master of the Rolls* said, that had the fact of Mr. Hargrave's having been in London during the beginning of the year 1836 been clearly proved, the presumption as to legitimacy would have been strong; it could only be met by a clear negativing of the access. It was a remarkable feature in the case that the deceased had recognized the son, born about six years after the separation as legitimate; and that he died four years after the birth of this son, and must have known whether or not the plaintiff was legitimate or not. From the conflicting state of the evidence, it appeared that the matter had not been thoroughly sifted; and therefore the parties were entitled to a new trial. No direction could, however, be given to examine the next friend at the trial.

Jan. 13.—*Penny* v. *Watts*—Motion to discharge an order for irregularity, refused with costs.

— 13.—*Yearsley* v. *Budgett*—Motion to discharge the order to take the bill *pro confesso*, refused.

— 13, 15, 16.—*Cornagio* v. *Lee*—Stand over.

— 17.—*Re Faulkner, Exparte Short*—Petition for delivery and taxation of bill of costs after payment, dismissed with costs.

— 17.—*Re James*—Apportionment of proceeds of sale of charity property, ordered between the parties for costs.

— 17.—*Page* v. *Broom*—Part heard.

Vice-Chancellor of England.

Stillman v. *Wheeden.* Dec. 2, 1848.

WILL.—SETTLEMENT.—EXECUTION OF POWER.—STAT. 1 VICT. C. 26.

A testator, by his will, dated in 1845, gave all his real and personal estate and the effects due to him from the estate of H., amongst his children, and, by a deed of settlement made in 1846, which recited that certain sums had been agreed to be paid to the testator as the portion of the personal estate of H. to which he was entitled, a power of appointing those sums among his children and their children, was reserved to the testator, the same to be executed by any deed or deeds, &c., or by his last will and testament: Held, on the construction of the will and settlement, and the stat. 1 Vict. c. 26, that the will was a good execution of the power.

IN the year 1839, Thomas Hedges, by his will, gave the residue of his estate and effects to James Stillman and William Stillman, in equal shares; he died in March, 1845. On the 18th of April, 1845, James Stillman made his will, and by it he bequeathed as follows:—"I dispose of all my real and freehold estates, and all my personal estate and effects whatsoever and wheresoever, and all effects due to me from the estate of the late Mr. Thomas Hedges, to my nine children, to be disposed of in manner following, &c." On the 9th of April, 1846, an indenture of settlement was executed by James Stillman, which recited the will of Hedges, and that the executors of Hedges had come to an agreement with the said James Stillman, that two sums of money, secured on certain rates to be raised by act of parliament, and three other sums secured on mortgage, should be taken as the portion of the personal estate of Hedges, to which James Stillman was entitled, and these sums were assigned to trustees on trust "for such person or persons, &c., as James Stillman from time to time, &c., by any deed or deeds, &c., should appoint, and in default of appointment, in trust to pay the rents and profits to James Stillman for life, and after his death, upon trust, as to the said trust monies and the interest and dividends thereof, for the nine children of the said James Stillman, or their children, for such interest or interests, and in such parts, shares, and proportions, and with such provisions for maintenance, &c., as the said James Stillman should from time to time, by any deed or deeds, instrument or instruments, &c., to be by him duly executed and attested, *or by his last will and testament*, or any codicil or codicils thereto, direct, limit, or appoint." James Stillman died on 1st Jan., 1848, and the question was, whether, under the Wills' Act, 1 Vict. c. 26, the will of James Stillman, made in 1845, was a good execution of the power of appointment contained in the settlement of April, 1846.

The *Vice-Chancellor*, after stating the facts

of the case, said the question was, whether, having regard to the words of the will and the words of the power, the will should be taken to be an execution of the power, and, on a due consideration, he was of opinion that he was bound to hold that it was an execution of the power. By the 24th section of the act, it was enacted, "that every will should be construed to take effect as if executed immediately before the death of the testator." The testator died in Jan., 1848, and if the will was to speak as if executed on the 1st of January before he died, there was a will which in form had disposed of all the effects due to the testator from the estate of Hedges, and the 27th section directed, "that any bequest of personal property described in a general manner, should be construed to include any personal estate to which such description should extend, (as the case might be,) which he might have power to appoint in any manner he might think proper." The words used were—"which he might have power," and he thought the 27th section must be taken in connection with the 24th, which expressly declared when the will should speak, therefore, the only possible question was, whether, as the testator on the 1st Jan., 1848, used the expression "all effects due to me from the estate of Hedges," those words could have been before the passing of the statute considered as an execution of the power in the deed, provided the will had been executed immediately after the deed, and he thought that no one could read the will without seeing that that expression described the very thing made the subject of the deed of settlement, and therefore the will was a good execution of the power in the settlement, and the children were entitled.

Mason v. *Best*. Nov. 23, 1848.

SERVICE OF COPY OF BILL.—23RD AND 24TH ORDERS OF AUGUST, 1841.

The affidavit of service of the copy of the bill under the 23rd Order of August, 1841, on the motion for leave to enter the memorandum of service under the 24th Order, need not show that in the copy served the interrogatory part was omitted.

This was a motion under the 24th Order of August, 1841, for leave to enter the memorandum of the service of the copy of the bill in the Six Clerks' Office; the order had been made but the registrar objected to draw it up, on the ground that the affidavit did not state the service of the copy of the bill "omitting the interrogatory part thereof," according to the 23rd Order of August, 1841.

Mr. *Smith*, who had appeared on the motion, mentioned this difficulty to the Court, and produced the case of *Gibson* v. *Haines*, 1 Hare, 317, where *Vice-Chancellor Wigram* said, it must appear in the affidavit that the interrogatory part was omitted.

The *Vice-Chancellor* said, it did not appear to him to be necessary, and memorandum of service might be entered up.

Jan. 11.—*Attorney-General* v. *Earl of Stamford*—Master's report, with modifications, confirmed.

— 11.—*Ladbroke* v. *Smith*—Bill of specific performance dismissed with costs, costs of bill of discovery to be set against the other costs.

— 11.—*Onyon* v. *Washbourne* — Injunction dissolved.

— 12.—*Rennie* v. *Rennie*—Exparte injunction, granted.

— 13.—*Gruggen* v. *Cockrane*—Master's report confirmed.

— 13.—*Lay* v. *Hortridge* — Injunction to restrain water-mill, refused.

— 16.—*Boothby* v. *Boothby*—Bill dismissed with costs.

— 16.—*Onslow* v. *Wallis*—Estate to be conveyed to the devisees in trust for the purposes of the will.

— 17.—*Dobson* v. *Lyall*.—*Cur. ad. vult.*

— 17.—*Colman* v. *Mellersh*—Part heard.

Vice-Chancellor Knight Bruce.

(In Bankruptcy.)

Exparte Lee, in re Higginson. Nov. 8 and 15, 1848.

RE-SALE.—HIGHER BIDDING.

At a sale under a bankruptcy, an estate was put up, subject to incumbrances. The mortgagee was the only bidder, and was declared to be the purchaser at 500*l*. *A person who was present at the sale did not bid, being uncertain as to the amount of incumbrances, but petitioned for a re-sale, offering* 1,250*l*., *and a re-sale was accordingly directed.*

THIS was the petition of Mr. Thomas Lee, and it prayed that the biddings for a West India estate, put up to sale on the 26th of April last, might be opened, the petitioner undertaking to advance 500*l*. upon the sum at which the estate had been purchased by Sir S. O. Gibbes, and to pay the said purchaser's costs. The estate had been put up to sale under the bankruptcy, subject to certain incumbrances, and Sir S. O. Gibbs, who was a mortgagee, and who, under an order of the Court, had leave to bid, became the purchaser for 500*l*. The petitioner stated that he attended the sale, but was prevented bidding from the uncertainty of the amount and nature of the incumbrances affecting the property, and especially as it was declared by the commissioner at the sale, that the biddings might be opened in the usual way before the 1st of October. The mortgagee made an affidavit, in which it appeared to be doubtful, whether the commissioner had in fact made the declaration he was alleged to have made: but it was clear that Sir S. O. Gibbes was the only bidder, but he had paid no deposit on the purchase money and no conveyance had been executed.

Mr. *Wigram* and Mr. *Freeling* offered to bid 1,250*l*. for the estate, being an advance of 750*l*., on the final bidding, if a resale were ordered. and cited *White* v. *Wilson*, 14 Ves. 151.

Mr. *Bacon* and Mr. *Pigott* for the purchaser, cited, *Exparte Partington*, 1 Ball & Beat. 209; *In re Martin and Ormsby*, 2 Molloy, 446, and *Exparte Hutchinson*, 2 Mont. & Ayr. 727.

Mr. *Russell* appeared for the assignees.

His Honour said, whether the practice of the Court of Chancery on the subject of opening biddings has any bearing on the present case, I do not say: it is not necessary for me to express an opinion upon it, and therefore I do not. I am satisfied, however, that neither the practice in bankruptcy, nor the practice in the Court of Chancery in such cases has any such bearing upon the question as to render it incumbent upon me to refuse the application upon this petition, which I think is supported, and sufficiently supported by the particular circumstances of the case, and I direct a resale. The purchaser must have his costs and all his expenses of course: the expenses of the former sale and those to which he has been put as to the title.

Hadfield v. *The Manchester, South Junction, and Altrincham Railway Company.* Nov. 3, 1848.

RIGHT OF WAY.—INJUNCTION.

A party claimed a right of way into a street which led through another street to certain roads right and left. A company carried their line so as to prevent access to these roads through the second street, and a bill was filed against them for an injunction. The evidence of the right was defective, and the Court refused the injunction.

Mr. *Bacon* and Mr. *Little*, on behalf of the plaintiff in this case, moved for an injunction to restrain the defendants from interfering with the rights of the plaintiff, by the execution of the works of the defendants' line of railway. The plaintiff was the proprietor of a piece of land near the end of James Leigh Street, in Manchester, and in order to obtain access into that street, and thence through Wakefield Street to Oxford Street and Great Marlborough Street, which are at the end of Wakefield Street, the plaintiff purchased of the proprietor of part of James Leigh Street, a small piece of ground, consisting of four square yards, which was between the plaintiff's land and the roadway in James Leigh Street. In the conveyance of this piece of ground the plaintiff covenanted not to build on the same, or any part thereof. The defendants proposed to form their line of railway upon solid masonry in a slanting direction across Wakefield Street, so that there would be no access through that Street to Oxford Street and Great Marlborough Street.

Mr. *Russell* and Mr. *Selwyn*, for the defendants, cited *Howell* v. *King*, 1 Mad. 109; and argued that the plaintiff alleging a private right of way, was bound to set out at what points respectively his right began and ended, which in this bill was not done.

Mr. *Bacon* replied.

His Honour said, that the act of which the plaintiff complained might or might not be wrongful as to some individuals, but if the plaintiff who was here suing on his own single behalf, was not entitled to complain of the act in the form of a suit, he could not, at his instance, upon this record, treat the act as wrongful. The plaintiff put his case upon a private right of way incident to his property. Apart from the question of pleading—assuming the plaintiff's pleading to be correct—what he claimed was a right of way, as incident to one or both of the two freehold properties, which he had acquired along Wakefield Street and James Leigh Street, and through Wakefield Street into Great Marlborough Street. If he had that right of way, there was no doubt it was intended to be interrupted. But the evidence before him fell very far short of that which was necessary to satisfy him that the plaintiff had such a right of way. He thought the plaintiff had not shown sufficient probability of a case to warrant the interference of the Court. If the plaintiff wished to bring an action, he might do so. His Honour added, that he had not intimated an opinion whether in some manner by another suit there did or did not exist the power of stopping this work. The plaintiff might bring an action if he pleased, or if he elected, the motion might be refused.

The motion was then ordered to stand over, with liberty to bring an action.

Jan. 12.—*Exparte Spackman, In re the Agriculturist Cattle Insurance Company*—Petition dismissed with costs.

— 12, 13.—*Exparte the Incumbent of Brompton, In re the Kensington Charities*—Decree in part in favour of charity, and reference to the Master as to the rest.

— 11, 13.—*Roberts* v. *South Wales Railway Company*—Injunction refused—Leave given to plaintiffs to bring action.

— 13.—*Attorney-General* v. *Munro*—Order made to deliver up key of church—Petition to stand over to last petition-day in Easter Term.

— 15.—*Yetts* v. *Norfolk Railway Company*—Demurrers for want of equity allowed.

— 16.—*His Royal Highness Prince Albert* v. *Strange, The Attorney-General* v. *Strange and others*—Injunction continued.

— 16.—*Exparte Angas, In re the North of England Joint-Stock Banking Company*—Master's decision to be reviewed.

— 16.—*Exparte Hawthorn, In re North of England Joint-Stock Banking Company*—Master's report confirmed.

— 17.—*Exparte Armstrong, In re North of England Joint-Stock Banking Company*—Master's decision to be reviewed.

— 17.—*Exparte Standerwicke, In re Dunn and others*—Leave granted to use the assignee's names in proceedings at law.

— 17.—*Exparte Johnson, In re Bulmer*—Petitioners declared entitled as creditors for the amount claimed.

Vice-Chancellor Wigram.

Nixon v. *Taff Vale. Rail. Com.* Jan. 11, 1849.

CONTRACT.

Where work not included in a contract, which required a written order in a certain form, was done with the privity of the company and their engineer: Held, *that it could not be deemed extra, as no written order had been given.*

Semble, *that any claim must be made at law, by action of covenant.*

In April, 1838, the plaintiff Nixon entered into a contract with the railway company to execute certain works therein specified, for a certain sum, to be increased or diminished by alterations or additions. Additions or alterations were only to be made by order given in writing, signed by two of the directors, or by their principal or assistant resident engineer, and to be paid for at the rates of the contract. Considerable extra work had been found necessary, and had been done with the privity of the company and their engineer, but without any written order. The company refused to pay for such extra work, and a bill was filed to enforce payment and for an account, and a reference had been made to the Master, who disallowed the claim on the ground of not being performed by written order.

Wood and *Stinton* for the plaintiff; the *Solicitor-General* and *James* for the defendants.

Upon exceptions to the Master's report, the *Vice-Chancellor* affirmed the Master's report, and *held* that the works having been performed without the written order, as required by the contract, could not be deemed extra. The claim was purely one of legal demand, to be made in an action of covenant; and the case would stand over for the plaintiff to consider whether he would take proceedings at law to try the covenant.

Loader v. *Clarke.* Jan. 15, 1849.

HUSBAND AND WIFE.—MARITAL RIGHT.—FRAUD.

A transfer by the wife, a few days before the marriage, of certain stock to a trustee for the benefit of her and the children of the marriage, held, *under the circumstances of the case, not to be in fraud of the marital rights.*

The plaintiff's wife transferred, a few days before the marriage, in 1827, a sum of 250*l.* reduced three per cent. stock into the joint names of her father, brother, and herself, and received the dividends thereon till her death in 1844. Letters of administration were granted to the plaintiff, who filed his bill for the transfer of the fund, alleging that the transfer in 1827 was made in contemplation of the marriage; and, being made without his privity or consent, was void from having been executed in fraud of his marital right. It appeared by the answer of the father and brother, that the settlor, at the time of the transfer, had made a parol declaration of trust in favour of herself and the children of the marriage. The husband, likewise, became aware, shortly after the marriage, of the transfer and of the payment of the dividends to the wife, and had never objected thereto.

The *Vice-Chancellor* held, that no fraud had, under the circumstances, been committed on the husband's marital rights. The issue, as to whether the trust of the fund had been declared in such a way as to admit of its execution, would be sent to a Court of Law, unless his Honour was specially desired by all the parties to decide it, and the case would stand over to ascertain which course the parties elected.

Smith v. *Palmer.* Jan. 12, 1849.

WILL.—CONSTRUCTION.

William Findlay, after providing for the enjoyment of his real and personal estate by his widow for her life, directed that his real estate at her death should be sold by his trustees, and one-third of the proceeds of the sale applied for the benefit of his cousin, James Strachan, if he should be then living; but if he should be then dead, to his personal representative or representatives, share and share alike. One other third of the proceeds was given to James Shanks, and the remaining share to Charles Smith, two other of the testator's cousins on similar terms.

The *Vice-Chancellor* held, that the shares of Strachan and Shanks, who died in the testator's lifetime, belonged not to their executors but to the parties entitled as next of kin, under the Statute of Distributions, 22 & 23 Car. 2, c. 10.

Jan. 12.—*Martinez* v. *Winstanley*—*Cur. ad. vult.*

— 13.—*White* v. *Crisp*—Leave given to bring action of covenant.

— 13.—*Forster* v. *Forster*—Reference to the Master as to the validity of a marriage and the marriage settlement of an infant clandestinely married.

— 15.—*In re Gaffee's settlement*—*Cur. ad. vult.*

Court of Queen's Bench.

(Before the Four Judges.)

In re Bellamy. Jan. 13, 1849.

DEPUTY PROTHONOTARY OF THE PALACE COURT.—RIGHT TO APPOINT.

Upon the motion of the *Attorney-General*,

The *Court* granted a rule, calling upon Mr. Brent, the Deputy Judge and Steward of the Palace Court, to show cause why a mandamus should not be directed to him, to admit Mr. Bellamy as Deputy Prothonotary of the Palace Court, in the room of Mr. Hewlett, deceased. It appeared, from the affidavit on which the rule was moved, that Mr. Bellamy claims under a deed of appointment executed by Sir H. F. Campbell, the Prothonotary of the Court, and that, on the 24th of November last, Mr. Bellamy appeared at the Palace Court, exhibited the deed under which he claimed the right to hold the office, and prayed to be allowed to take his place as

Deputy Prothonotary; but that the Deputy Judge refused to admit him to the office, upon the ground that he was ignorant of the business of the Court.

Foster v. *Tattersall.* Jan. 12, 1849.

DEFICIENCY OF AFFIDAVIT. — EFFECT OF JURAT.

Where an affidavit omitted to state the year in which the facts deposed to therein occurred, but in lieu thereof, contained the word "instant:" Held, that it was irregular, and that the defect could not be supplied by reference to the date of the jurat, where the year was mentioned.

An application was made to Mr. Justice *Patteson*, at chambers, to set aside three writs for irregularity. Upon an affidavit of the defendant, verifying copies of the writs, and in which the defendant stated, that he had been served with such copies on certain specified days in the month of December "instant." The jurat of the affidavit, after the word December, contained the words and figures "in the year of our Lord, 1848." The omission of the year in the affidavit having been pointed out to the judge at chambers, and his attention being directed to the case of *Hughes* v. *Brown*, 1 Dowl. & Lownd. 788, where it was held, that the omission of the full date in the body of the affidavit could not be supplied by reference to the jurat, because, as suggested by *Maule*, J., the deponent might never have seen the jurat. Mr. Justice *Patteson*, on the authority of that case, dismissed the summons.

Upon an application now to the full Court of Queen's Bench, for a rule *nisi*, to review the decision of Mr. Justice *Patteson*, it was urged, that the Court had constantly received affidavits in which the words "instant" and "next," were substituted for the year in the body of the affidavit, the number of the year appearing in the jurat.

The *Court*, however, were unanimously of opinion, that the case of *Hughes* v. *Brown*, had been rightly decided, and that Mr. Justice *Patteson* had properly acted on its authority.

Rule refused.

Jan. 11.—*Dawson* v. *Hay*—Rule *nisi* granted for new trial.

— 11.—*Tremearne* v. *Parker* — Rule *nisi* granted for new trial.

— 11.—*Tucker* v. *Robarts*—*Cur. ad. vult.*

— 12.—*Reg.* v. *Dixon*—Rule absolute for *quo warranto*.

— 12.—*Royle* v. *Dixon*—Rule *nisi* to reduce damages on writ of inquiry.

— 12.—*Reg.* v. *The Inhabitants of Cricklade*—Rule absolute for new trial.

— 12.—*Hankinson* v. *Alcock*—Rule *nisi* for new trial.

— 13.—*Reg.* v. *Griffin*—Rule *nisi* to take certain pleas off the record refused.

— 13.—*Morrell* v. *Wootton*—Rule *nisi* for new trial.

— 15.—*Reg.* v. *Archbishop of Canterbury*, *In re Reg.* v. *Bishop of Exeter*—Stand over till 17, when the rule to be made absolute if no cause shown by the Bishop of Exeter.

— 15.—*Vigers* v. *Dean and Chapter of St. Paul's*—Judgment for defendants.

— 15.—*Reg.* v. *Shaw and others, Justices of Birmingham*—*Cur. ad. vult.*

— 15.—*Guardians of Woodbridge Union* v. *Corporation of Colnes and Carlford*—Issue on the plea found for the plaintiffs.

— 15.—*Reg. Smith and others*—Rule *nisi* for new trial: cross rule afterwards obtained to enter up judgment for the Crown, on the ground of irregularity in the specification.

— 15.—*Dawley* v. *Phipps*—Rule *nisi* to set aside verdict and enter nonsuit.

— 16.—*Jackson and others* v. *Charing Cross Bridge Company*—Rule *nisi* to set aside interlocutory judgment.

— 16.—*Cobbett* v. *Hudson, keeper of the Queen's Prison*—*Cur. ad. vult.*

— 17.—*Osterman* v. *Bateman*—Rule *nisi* for new trial.

— 17.—*Smith* v. *The Queen*—Stand over.

— 15, 17.—*Gadsby* v. *Esthall* — Rule for new trial.

— 17.—*Lowe* v. *Penn* — Rule absolute for new trial.

Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

Doe dem. Poole v. *Willis and others.* Michaelmas Term, Nov. 23, 1848.

EJECTMENT.—CONSENT RULE NOT SIGNED. —NULLITY.

Where a party seeks to be let in to defend in the place of the casual ejector, the original consent rule must be delivered, with the plea of not guilty; and if the consent rule be not signed by the defendant's attorney, it is a nullity, although an appearance has been entered; and the plaintiff may sign judgment against the casual ejector.

THIS was a rule calling upon the lessor of the plaintiff to show cause why the judgment signed herein against the casual ejector, and all subsequent proceedings, should not be set aside for irregularity.

It appeared by the affidavits used in this case, that the landlord of the premises to recover which the action was brought, wished to be let in to defend with the tenant, and accordingly an appearance was entered for him, and a consent rule with a plea of not guilty delivered to the attorney of the lessor of the plaintiff. This consent rule was not signed by the defendant's attorney, whereupon the plaintiff's attorney signed judgment against the casual ejector, and issued execution.

The present rule having been obtained, *Lush* and *Prentice* showed cause, and contended that as there was no signature to the consent rule by the defendant's attorney it was a nullity, and therefore the judgment was perfectly regular; there was in fact no consent rule, and if any further proceedings had been taken without it they would have been void. *Doe*

dem. Burnham v. *Lever*, 13 M. & W. 688; 2 D. & L. 644, S. C. They also contended that the Court would not let the defendant in even on payment of costs, but would leave them to bring mere ejectment. They cited Reg. Gen. H. T. 1 Vict. Q. B.; *Doe dem Falmouth* v. *Alderson*, 4 Dowl. 701; *Doe dem. Faithful* v. *Roe*, 7 Dowl. 718; and *Doe dem. Hanchecorne* v. *Roe*, 2 D. & L. 96.

Chambers, Q. C., and *M'Intyre*, contrà. There are two questions in this case:—First, is this consent rule so entirely a nullity on account of its not being signed by the defendant's attorney that the plaintiff may sign judgment without first coming to the Court to set aside the appearance; and secondly, if it is such a nullity, will the Court shut out the defendant absolutely? As to the first point, they contended that the consent rule not being signed was only an irregularity, and that as an appearance had regularly been entered, which was the first step to be taken by the defendant, he was in Court in the action, and judgment could not be signed against the casual ejector without the appearance which had been entered having first been set aside. The Master would not have entered the appearance unless a proper consent rule had been produced to him, so the Court will presume that what was served was an incorrect copy, which would be a mere irregularity. Secondly, at all events the consent rule delivered not being signed was a mere slip, and the Court will let in the landlord to defend on payment of costs, merits being sworn to. *Doe dem. Cox* v. *Brown*, 6 Dowl. 470; Adams on Eject. 251.

Patteson, J. The defendant is altogether wrong even upon his own showing, for the rule of Hilary Term, 1 Vict. orders that "the plea with the consent rule," and not a copy of it, "be delivered in like manner as pleas in other actions, the defendant's appearance being first entered with the proper officer as heretofore." It has been said that the defendant is in Court in the action by entering an appearance; but how can that be said when he does not show that he has consented to being made defendant by entering into the consent rule; could you bind him to pay costs? clearly not. The consent rule is a part of the machinery of this action to make a real person defendant instead of a nominal one. The delivery of a piece of paper purporting to be a consent rule, but without any signature to it, is a mere nullity; and although it is argued that in all probability a proper consent rule was shown to the Master when the appearance was entered, yet as that was not delivered with the plea, it amounts to nothing, and the judgment was therefore regular; but as I think it was a mere slip, I think the landlord ought to be let in to defend on payment of all costs.

Rule accordingly.

(Before Mr. Justice Erle.)

In re Scott. Jan. 12, 1849.

ATTORNEY.—STRIKING OFF THE ROLLS.

Where an attorney is imprisoned for felony, and according to the regulations of the magistrates, cannot be served with the rule nisi *for striking him off the Roll, the Court will enlarge the rule; but service on the keeper of the prison will not be good service.*

A RULE *nisi* was made last Term, on the application of the Incorporated Law Society, to strike Montagu Douglas Scott off the Roll, on the ground that he had been convicted, on the 18th September last, of feloniously stealing certain articles of plate, and sentenced to be imprisoned and kept at hard labour in the House of Correction at Clerkenwell.

Mr. *F. Robinson*, on the part of the Incorporated Law Society, moved to enlarge the rule, and that service on the gaoler should be deemed good service. A clerk from the Law Society had attended at the House of Correction to serve the rule, but was refused admittance without permission of the visiting justices. The Secretary of the Society then applied to the magistrates for permission to serve the rule, but was informed that they must decline allowing the service on the prisoner, it being contrary to the practice of the prison to allow any process to be served on prisoners that might be prejudicial to their interests.

Mr. Justice *Erle* said, that if the rule could not be served upon the prisoner according to the rules of the prison, the keeper could not himself serve the rule.

Mr. *Robinson* then applied to enlarge the rule until the last day but one of Trinity Term, as Mr. Scott would not be set at liberty until the month of June.

Rule enlarged accordingly.

Jan. 11.—*Bate* v. *Bate*—Rule *nisi* for payment of the amount of award.

— 11.—*Reg.* v. *Jones and another*—Rule *nisi* for costs of mandamus.

— 11.—*Joseph* v. *Bordenane*—Rule *nisi* to enlarge peremptory undertaking.

— 12.—*Welshman* v. *Sturges*—Rule *nisi* for payment of money out of Court, bail having been perfected.

— 16.—*Hickman and others* v. *Smith*—Rule *nisi* to set aside verdict on leave reserved, otherwise rule for new trial.

— 16.—*Derbyshire, Staffordshire, and Worcestershire Railway Co.* v. *Woodland, clerk*—Verdict for plaintiff; execution in 14 days.

NISI PRIUS.

Jan. 11.—*Lane* v. *Clarke*—Verdict for the plaintiff.

— 12.—*Lewis* v. *Ramsay*—Juror withdrawn. Debt paid without costs.

— 13.—*Chambers* v. *Slater*—Verdict for plaintiff.

— 16.—*Doe d. Howe* v. *Thornton and Cripps*—Verdict for plaintiff, subject to the opinion of the Court.

— 17.—*Virtue* v. *Painter*—Plaintiff nonsuited, with leave reserved to move to enter verdict for plaintiff.

Court of Common Pleas.

Belcher and others (*assignees*) v. *Brown.*
Michaelmas Term, 1848.

FEIGNED ISSUE.—ASSIGNEES IN BANKRUPTCY AND EXECUTION CREDITOR.—JUS TERTII CANNOT BE SET UP.

Under a feigned issue to try the right to certain goods of a bankrupt, as between an execution creditor and the assignees in bankruptcy, under a fiat issued after the execution creditor had seized the goods, it is not open to the assignees to set up the rights of third parties, who had seized the bankrupt's goods before such execution creditor, and sold them after the issuing of the fiat.

THIS was a feigned issue between the plaintiffs, as the assignees in bankruptcy of one C. Brown, a bankrupt, and the defendant, an execution creditor of the bankrupt, to try the right to certain goods seized under an execution at the suit of the defendant. At the trial it appeared that on the 27th of February, 1847, all the goods of Brown, in the city of London, were seized under an execution from the Lord Mayor's Court, in a cause of *Lascelles* v. *Brown*. On the 3rd of March, the defendant's writ of execution in *Patten* v. *Brown*, was delivered to the officer of the Sheriffs of London, and was executed the next day, but not until a few hours after Brown's landlord had distrained upon "all his goods and chattels upon the premises, or enough thereof to satisfy the rent" due. On the 6th of April, a sale under the latter distress took place, the landlord paying off the execution creditor in *Lascelles* v. *Brown*, and a surplus remaining. On the 9th of March, the fiat in bankruptcy was issued against Brown. The plaintiffs had a verdict, leave being reserved to move to set it aside and enter a verdict for the defendant. Accordingly a rule *nisi* had been obtained for that purpose, and the question raised and argued was, whether or not, on the 4th of March, there remained in Brown such an interest in the goods, as the sheriff could legally seize under the execution in *Patten* v. *Brown*, and thus secure the defendant from the title of the assignees under the fiat issued afterwards, but before the actual sale under the landlord's distress.

Byles, Serjeant, and *Couch* showed cause, citing as authorities Com. Dig., Execution, C. 4; *Wilbraham* v. *Snow*, 2 Saund. 47, note; *Backhurst* v. *Clinkard*, 1 Show. 169; *Reddell* v. *Storell*, 2 Mood. & Rob. 358; *Johnson* v. *Evans*, 7 Man. & Gr. 247; *Legg* v. *Evans*, 6 Mees. & Wels. 36; *Harrison* v. *Paynter*, Id. 387; 2 Tidd Pr. 1,003.

Talfourd, Serjeant, and *Beavan*, argued contrà, and referred to *Jones* v. *Atherton*, 7 Taunt. 76; *Saunders and others* v. *Bridges*, 3 B. & A. 95; *Graham* v. *Witherby*, 7 Q. B. 491; *Scott* v. *Lewis*, 2 Cr. M. & R. 289; *Wheatley* v. *Lane*, 1 Wms. Saund. 219, *g*, note *t*; *Giles* v. *Grover*, 9 Bing. 128; 1 Roll. Abr. pl. 893, l. 40.

Coltman, J.[a] It is clear that the original property in the goods was in Brown, and it was not altered when the matter in question occurred, the goods therefore were liable to be taken in execution as against Brown, although some persons had put in claims which might have been enforced. If the execution creditor in the Mayor's Court and the landlord had thought proper to put forth their claims, the matter might have been different; but the question here is, whether Brown or his assignees can set up the rights of third parties who do not themselves interfere to dispute the execution. I think not. It is setting up in effect the claim of a mere stranger, and the assignees have no right to bring forward such a claim.

Maule, J. I am of the same opinion. The question is, whether, as between the assignees and the defendant, the execution creditor, the goods were the bankrupt's or not; that is to say, both claiming through the bankrupt, the assignees say at the time of the seizure the goods belonged to them, and the defendant that at that time they were liable to him, and the interpleader rule issued for the purpose of deciding that question. It seems to me that what the assignees seek to do in the present case is much the same as if in the ordinary interpleader rule one of the parties were to set up that the execution debtor had an infirm title to the goods. That was quite an immaterial question, and so is that set up here, because the persons whose right is set up do not interfere. The assignees say there was an infirmity in the title of the execution debtor Brown, and that is beside the question of who, as between them and the defendant, is entitled to the goods.

Williams, J. The goods at the time of the seizure were the goods of the bankrupt within the meaning of the 6 Geo. 4, c. 16, s. 108, but for the claims of the execution creditor in the Mayor's Court and the landlord, and the claim sought to be now set up by the assignees, is nothing more than the *jus tertii*.

Rule absolute.

Jan. 11.—*Exparte Taylor*—Motion refused—Leave to amend affidavit.

— 11.—*Bell* v. *Elverston*—Rule *nisi* for judgment as in case of nonsuit.

— 11.—*Williamson* v. *Robinson*—Judgment for plaintiff.

— 12.—*Catlin* v. *Hills and others*—Rule *nisi* for new trial.

— 13.—*West* v. *Baxendale*—Rule *nisi* for new trial.

— 13.—*Beard* v. *Egerton*—Part heard.

— 15.—*Smith and others* v. *Anderson*—Part heard.

— 16.—*Gillingham* v. *Stewart*—Rule for new trial, and to have nonsuit set aside, on the ground of surprise, refused.

— 16.—*Coe* v. *Howard*—Rule *nisi* for new trial, on paying damages and costs into Court.

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[a] *Wilde*, C. J., was absent.

Jan. 16.—*Maria Cant* v. *Hodges, executrix*—Rule to set aside verdict and enter nonsuit refused.

— 16.—*Higgs* v. *Scott*—Rule to enter verdict for plaintiff upon leave reserved, refused.

— 17.—*Draper* v. *Faria*—Rule for new trial refused.

— 17.—*Sanderson* v. *Dobson*—Part heard.

Court of Exchequer.

Smith v. *Roberts*. Jan. 13, 1849.

SUGGESTION TO DEPRIVE PLAINTIFF OF COSTS NOT ALLOWED AFTER JUDGMENT.—PRACTICE.

In an action for an assault, the defendant suffered judgment by default, and upon a writ of inquiry, the damages were assessed at one shilling. The Under-Sheriff certified that the assault was malicious, and the plaintiff taxed his costs and signed final judgment. A rule having been granted to shew cause why a suggestion should not be entered to deprive the plaintiff of costs under the County Courts Act,

The *Court of Exchequer*, upon shewing cause, intimated that they would adhere to the rule laid down by this Court in Michaelmas Term last, in the case of *Soames* v. *Cooper*, (see *ante*, p. 154,) that a suggestion could not be entered to deprive the plaintiff of costs whilst a judgment in the ordinary form was standing on the record. The proper course in such cases was, first to move to set aside the judgment, and then to move for leave to enter a suggestion. The Court also intimated, that it was extremely doubtful whether the 129th section of the 9 & 10 Vict. c. 95, upon which the application was founded, extended to a case where there had been no trial, but the judgment passed by default. The rule was discharged with costs.

Badley v. *Oliver*, 1 Dowl. 598, and *Bond* v. *Bailey*, 3 Dowl. 807, were cited by counsel in support of the rule, as at variance with the recent decision of this Court in *Soames* v. *Cooper*.

Jan. 11.—*In re William Cobbett*—Prisoner remanded.

— 11.—*Brown* v. *Yardley*—Rule by consent.

— 13.—*Ricketts* v. *Noble*—*Cur. ad. vult.*

— 13.—*In re Hammersmith Rent-charge*—*Cur. ad. vult.*

— 15.—*Wakley* v. *Healey and another*—Rule *nisi* for new trial.

— 15.—*M'Sweeney* v. *Burkett and others*—Rule *nisi* for new trial refused.

— 15.—*Thompson and another* v. *Bailey and another*—Rule *nisi* for new trial to be granted, unless parties consented to reduce damages.

— 15.—*Homersham* v. *Wolverhampton Waterworks Company*—Rule *nisi* for new trial.

— 16.—*Westley* v. *Bonsor*—Rule for new trial refused.

— 16.—*Wright* v. *Woodroofe*—Motion to set aside judgment, and subsequent proceedings for irregularity, refused.

— 16.—*Hatlock* v. *Challis and another*—Rule to set aside verdict and for new trial refused.

— 17.—*Cox* v. *Midland Railway Company*—Rule absolute to enter nonsuit.

— 17.—*Tatton* v. *Hammersley*—Demurrer to plea setting up conveyance allowed.

NISI PRIUS.

— 12.—*Bussey* v. *Ellerton*—Verdict for defendant.

— 13.—*Foley* v. *Snell*—Verdict for plaintiff.

— 13, 15.—*Hawkins* v. *Harwood*—Verdict for plaintiff.

— 15.—*Lejeune* v. *Lejeune*—Verdict for plaintiff.

— 16.—*Waller* v. *Pocock*—Verdict for plaintiff.

— 16.—*Goodhew* v. *Watkin*—Verdict for defendant.

— 16.—*Stocken* v. *Yeomans*—Verdict for defendant.

— 17.—*Westall* v. *Brain*.—Part heard.

Nisi Prius.

(*Coram* Wilde, C. J.)

Stovel v. *Matthews*. Dec. 5, 1848.

LIABILITY OF PARENT FOR GOODS SUPPLIED TO SON.—EFFECT OF PAYMENT INTO COURT.

In an action by a tailor for an expensive military outlay supplied to the defendant's son, it appeared the goods in question were ordered by the son without the father's knowledge; but that the defendant afterwards called at the plaintiff's shop to know what his son owed, and talked of discharging the account, but objected to its amount. The defendant also paid 70*l.* into court. It was submitted, under these circumstances, that the plaintiff must be nonsuited upon the authority of the cases of "*Mortimer* v. *Wright*," 6 Mees. & W. 482; "*Baker* v. *Reeve*, 2 Stark. 501; and *Rolfe* v. *Abbott*, 6 Car. & P. 286.

The *Lord Chief Justice* was of opinion there was not sufficient evidence to enable the jury to find for the plaintiff, but he could not say there was no evidence. The liability of a father stood on the same grounds as the liability of any other person against whom a demand was made for goods supplied. It must be proved the goods were supplied on his credit and with his authority. The defendant could not be made responsible for this debt by reason of anything which passed at any interviews after the debt was contracted, unless that which passed at such interviews satisfied the jury that he was originally liable. The defendant had paid 70*l.* in court, but the jury could not take that by law as any admission of liability beyond the 70*l.*

The jury found for the defendant.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JANUARY 27, 1849.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

THE SEVERAL BRANCHES OF THE PROFESSION.

THE INNS OF COURT. — EXCLUSION OF ATTORNEYS.

It will soon be our duty to direct the attention of our readers to the business of legislation, and to notice the several projects for the amendment or alteration of the law. Space must be found especially for the measures relating to the Court of Chancery and the Law of Bankruptcy and Insolvency. We are, therefore, now induced to advert to some matters, recently discussed, which bear on the position and interests of the two great branches of the profession.

It is acknowledged that the attorneys and solicitors, from their own unassisted resources, and although taxed, as they peculiarly are, to the extent of 90,000*l.* a-year, have, within the last 20 years, taken many important steps for the improvement of their branch of the profession:—

1. They have founded an institution, comprising an extensive Law Library, and a Hall, in which is daily collected information of the state of business in all the Courts.

2. They have instituted Lectures in all the principal branches of the Law; paying, hitherto, the compliment to the Bar of inviting lecturers almost entirely from that branch of the profession.

3. At their instance, the judges appointed the Masters of the Courts and the governing body of the Institution examiners of all persons applying to be admitted on the Roll of Attorneys, and the legislature has subsequently confirmed and expressly sanctioned these examinations.

4. At their suggestion, also, the legislature enacted an annual registration of all attorneys and solicitors; and the judges followed this with new Rules of Court to carry out the intention of parliament, and prevent the admission or re-admission of improper persons on the Rolls of the Court.

This state of things shows that the attorneys have used no common exertions to extend the means of professional improvement, and entitled themselves, in return, to the encouragement and assistance of the ancient societies to which they formerly belonged. Let us inquire then what the benchers of those societies have done towards this large body of practitioners, on whose skill, intelligence, and integrity, both the Bench and the Bar must rely.

The answer is, that they have made rules which entirely exclude attorneys from being members of the Inns of Courts, from resorting to their libraries, or being present at their readings or lectures. The ancient regulations, which not only allowed, but enjoined attorneys to be members of those institutions, have been disregarded, and the rules, which required attorneys to cease practising for two years before they could be called to the Bar have been made still more stringent. A *five* years' quarantine is now required before a man coming from the ranks of the attorneys can enter those of the Bar.

The attorneys, therefore, labour under double grievances: they are excluded, on the one hand, from offices of honour, on the ground that they do not generally possess sufficient learning and ability; and on the other, they are deprived of the means and inducements to acquire knowledge and cultivate their talents, by restrictions which evidently tend to reduce them to little more than mechanical employment;—a course of proceeding which we are convinced is as impolitic towards the public as it is unjust to the profession.

The powers possessed by the Benchers are indeed marvellous, both in their extent and the mode in which they are exercised. They may select, without control or appeal, what classes or individuals of the community they please for admission to their privileges, and may exclude all others from the right of advocacy in the Superior Courts, —that high-road to the most eminent offices in the State. Doubtless, it will be admitted, even by the eminent personages who rule these four great Colleges of the Law—the Inns of Court—that it is most extraordinary and anomalous that such powers should be entrusted to mere voluntary societies, who possess no statutory or chartered constitution, nor any rules or regulations of our Courts of Justice, and who reject all interference with the self-election for life of that governing body in whom these powers are vested.

Then, it may be inquired, what are the supposed advantages to the public, in return for these extraordinary privileges? It cannot be denied that there is no security that the persons admitted to the Bar are duly qualified, or have received any legal education, or undergone any preparatory examination. There is no provision for legal instruction or exercise during their membership—no examination during their studies—no test of fitness when the degree of barrister is conferred upon them—no restriction on their course of practice—in short, the whole is left to the choice of the individual who is thus clothed with the exclusive authority of practising in every branch of the law, without giving the slightest proof of his knowledge or capacity for the discharge of the duties of his calling.

If such institutions did not actually exist, it would be deemed impossible, in any stage of society, that they could be tolerated. Doubtless, their long continuance has been owing to the caution and discretion with which, for the most part, the power of the Benchers has been exercised. The system has been supposed to work well, and originating in the "good old times," no one, till these days of change and reform, ventured to question their wisdom and excellence. Thus the reform which is so manifestly needed has been long delayed. Some recent instances of abuse in the mode of exercising their extraordinary powers, will, no doubt, accelerate the change. But especially the prevalent opinion in favour of a better system of legal education, which has already undergone parliamentary investigation, will, at no distant day, lead to important amendments. For our parts personally, we should be deeply concerned to witness any change in these ancient colleges which would destroy that feeling of respect which belongs to them,—associated, as they are, so intimately with the Courts at Westminster. We desire only that they should be renovated according to their original design in promoting the study and practice of the law, and that every one, whether in the first or second grade, should possess the advantages which belong equally to all students and practitioners of the law.

Whilst such is the state of legal education for the Bar, and whilst the attorneys have been driven to found an Institution of their own, it is manifestly a grievous hardship that they should be deprived of the offices of distinction for which they seem peculiarly fitted, and which they formerly enjoyed. Several of the encroachments upon the professional rights of attorneys by members of the Bar have been noticed in the addresses of the Metropolitan and Provincial Law Association, and on this subject we willingly find room for the following letter from a correspondent, who appears to be well acquainted with the subject, and whose statement may be preferable to our own.

ENCROACHMENTS ON THE PROVINCE OF ATTORNEYS.

To the Editor of the Legal Observer.

SIR,—In the last long Vacation, I addressed a letter to you on the questions, which, for some time past, have been agitated between some junior members of the Bar, and the attorneys and solicitors.[a] Since then, some other letters have appeared in your work: one from Leeds, on the Status of Attorneys,[b] and another from Liverpool on Compulsory References at the Assizes.[c] I observe, also, that you have

[a] 36 L. O. 439. [b] 36 L. O. 522.
[c] P. 43, *ante*.

taken up the subject of the Right of Advocacy at the Sessions, and the Province of the Bar generally.[d]

One of your contemporaries, *The Law Times*, who used to show much zeal for the country solicitors, has recently seized the cudgels in behalf of the Sessions Bar in the west of England, and pitted himself against the attorneys in that district, who, having long practised as advocates at some of the smaller Sessions, naturally objected to the exclusive audience claimed by some recently-called members of the Bar.

Before this new advocate of the Bar had put forward a complaint of the supposed encroachments of the attorneys against the rights of *his* "order," it would have been well if he had adverted to those encroachments of his "learned friends" on the proper sphere of the attorneys, which have so often been adverted to in your pages.

Let it be recollected that all the highest rewards and honours of the profession are peculiarly reserved for the members of the Bar. The highest office in the state—that of the Lord Chancellor—is before them in the distance; the chief and other seats on the Bench of Westminster Hall, and numerous judgeships in other Courts, await them, besides the long list of Commissionerships mostly reserved for "barristers of seven years' standing." These afford ample inducements to crowd the ranks of the long robe, without resorting to those humbler posts of honour or emolument which ought to be left to the second grade of the profession.

There are two classes of offices regarding which there are just complaints made by the attorneys:—1st, Those offices which may be possessed either by barristers or attorneys, but which the former monopolize; 2nd, Those which peculiarly belong to the attorney, but are partly usurped by the Bar.

The first class consists of the *Commissioners*, *Judges*, or *Assessors* of the Inferior Courts, and of the right of acting as advocates in those Courts. Many appointments of this nature, both lucrative and honourable, were, until lately, held in common by attorneys and solicitors, as well as barristers.

The Bar has not only superseded them in these instances, but engrosses almost all the new appointments created by modern acts of parliament. Scarcely a Session passes but new boards of commissioners are established, the execution of which it would be beneficial to the public to entrust, in part at least, to solicitors of experience; but they are almost always excluded, and the appointments confined to members of the Bar.

The second class includes several important appointments. They are as follow:—

1. The members of the Bar, in many instances, act as *Solicitors for Government Boards*, particularly the Treasury, the Customs, andthe Excise, in direct contravention of the ancient rules and regulations of the Inns of Court. Thus, it was ordered, in Easter Term, 16 Eliz., (1574,) that "if any thereafter admitted in Court, practise as attorney or solicitor, they are to be dismissed and expulsed out of their houses thereupon, except the persons that shall be solicitors shall also use the exercising of learning and mooting in the house, and so as to be allowed by the Bench." The solicitors, it is well known, are excluded from all opportunity of resorting to the Inns of Court; yet many influential members of the bar do not scruple to accept the post of government solicitors, and still belong to these "ancient and honourable societies."

2. In the next place, many members of the Bar act as *stewards* of the nobility and gentry, which is evidently the proper employment of solicitors, and for which their practical habits of business peculiarly qualify them.

3. Of late years, barristers have taken the office of *secretary* in various public companies and societies, for discharging the duties of which it seems manifest that the course of education and experience of solicitors are the best preparation; and I conceive it to be clearly intended by the ancient Rules of the Inns of Court, that where barristers quit their proper sphere of action in the Courts, and undertake the official duties of public companies, they should cease to be members of the Bar.

4. Barristers likewise seek, to an extent before unknown, the office of *Registrar* in all sorts of Courts. Lord Brougham prevented this, even in the High Court of Chancery, by his Chancery Regulation Act, (3 & 4 W. 4, c. 94); but the practice prevails in the Bankruptcy Courts, both metropolitan and provincial, where evidently there is much less excuse for it than in the Superior Courts.

5. There are also some recent instances of members of the Bar obtaining the office of *Clerks of the Peace*,—a post which ought to be conferred on solicitors only.

It is, I submit, essential to the character

[d] Pp. 61, 83, 104, 123, 142, 181, *ante*.

of a barrister that he should continue in a position that may enable the suitors to call upon him at any time to advocate their causes. He ought not to take the *rank* and *privilege* of a barrister without being prepared to perform its *duties*. He ought not to be called one day,—devote his services to commercial purposes the next, and then after the mysterious number of *seven* years has elapsed, without any actual practice at the Bar, become a judge of a local Court, or fill any other of the numerous posts which ought to be the reward of meritorious professional services. This practice is equally unfair and injurious, as well to the really efficient members of the Bar, as to the other branch of the profession.

ATTORNATUS.

ABSENCE OF COUNSEL IN THE COMMON LAW COURTS.

THE absence of Queen's Counsel, who were instructed and had undertaken to argue Special Cases and Demurrers, was strongly animadverted upon by the judges of the Court of Exchequer, on a recent occasion. It was stated from the Bench, that cases of this description were constantly argued in former times by gentlemen of the *outer* Bar, and it was observed, with obvious justice, that if those who have taken "rank" at the Bar think fit to undertake this branch of practice, they should arrange so as to give their clients the benefit of their attendance on the days especially appropriated to hearing the arguments in causes in the Demurrer and Special papers. We trust this tolerably significant hint will have its effect, and that, to adopt the homely but very expressive language of Baron Parke, on the occasion alluded to, her Majesty's counsel will in future make up their minds to "share the profits" of arguing special cases and demurrers with the Junior Bar, or else to reject briefs which compel them to be absent from the Court in which they have undertaken to attend to this class of business.

We are not ignorant that it is very constantly said, but as it seems without much consideration, that the remedy for abuses and evils of this nature rests with the other branch of the profession. Why, it is asked, do attorneys and solicitors press their briefs on men overwhelmed with the weight and multiplicity of the causes entrusted to them, and of whose personal presence in any particular case they have only a bare chance, when there are a multitude of able and competent men at the Bar, of greater or lesser standing, who have abundance of time at disposal, and are sure to give their punctual attendance, as well as their best exertions, to any cause entrusted to them? The answer is, that attorneys and solicitors, adopting and sympathising with the feelings and wishes of their clients, are anxious in every case to procure the ablest and best assistance which can be obtained. The counsel to represent him is frequently a subject of the most anxious consideration with the client, and if the attorney or solicitor *ex mero motu* were to retain a counsel, of even second rate experience and reputation, he would often incur a very serious additional responsibility. He therefore endeavours to secure the services of the best, having regard to the nature of the duties to be performed and the Court in which the cause is depending.

It is the theory of Bar practice, we are aware, that the contract between the counsel and client is no more than that the former will attend if he can. In practice, the brief is uniformly delivered and received upon the understanding that counsel will attend. The frequent violation of this understanding is constantly followed by an amount of mortification, disappointment, and positive injustice, not universally known, but which is calculated not only to lower the position of the barrister and the attorney, but to throw a certain degree of discredit on the administration of justice generally. We are satisfied that the members of the Bar will best consult their own honour and character by peremptorily declining to accept briefs in cases which they may not be able personally to attend. Let us add, that the judges have it in their power materially to contribute to this desirable result, not only by consulting the convenience of counsel in the arrangement of business, but also by giving the public clearly to understand that counsel who have taken "rank," have not peculiarly the ear of the Court, and that the arguments of a junior of limited business and moderate experience, are uniformly heard with the patience, respect, and consideration which they merit.

The Court of Exchequer has announced, within the last week, that the Banco Sittings after Term have been arranged with a view to hearing the arguments in cases in the Demurrer Paper, whilst the Leaders are engaged at the Nisi Prius Sittings at Guildhall.

QUESTIONS AT THE EXAMINATION.

Hilary Term, 1849.

I. Preliminary.

Where, and with whom, did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

Mention some of the principal law books which you have read and studied.

Have you attended any and what law lectures?

II. Common and Statute Law, and Practice of the Courts.

What are local and what transitory actions?

Are there any and what persons who cannot bring actions in their own names; and how are they to proceed to recover damages for an injury?

In case of injury to a person, from which death ensues, is there any mode by which compensation can be sought, and by what means, and by whom, and against whom must it be?

What are the several periods of limitation of actions?

How long does a writ of summons remain in force?

When is a writ of distringas issued, and how can it be obtained?

State some of the usual defences to an action, and the mode of making them by plea or otherwise.

Is there any and what property that cannot be taken in execution?

What is the rule as to attesting warrants of attorney and cognovits?

State what are the usual matters referred by the Court to one of the Masters.

Describe some of the proceedings termed "Interlocutory," and how are questions thereon decided?

If a landlord lets a house by parol for three years, and nothing is mentioned as to repairs, state what repairs each party would be liable to, and what would be dilapidations on the part of the tenant.

State the cases in which you are compelled to sue under the Small Debts County Court Act, and how and where the suit may be brought; and where must the respective parties be residing at the time?

Will any privilege protect a person from being sued in the Small Debts Court; and would the same privilege allow the party to sue in the Superior Court for a debt that might be recovered in this Court?

Under what circumstances may a party sue in the Superior Courts for a debt recoverable in the Small Debts Court?

III. Conveyancing.

A., by bargain and sale, or appointment under a power, conveys to *B.* and his heirs to the use of *C.* and his heirs;—what estates do *B.* and *C.* respectively take?

A testator bequeathes the residue of his personal estate to several persons as tenants in common; two of the residuary legatees die in the lifetime of the testator: what becomes of their shares?

What course should an executor adopt for his own safety, who has in his hands a legacy to which an infant is entitled, there being no trustee under the will?

Can a person having an absolute power of appointment over real estate, defeat judgments entered up against him subsequently to the vesting of such power in him, in any and what way? State your reasons for your answer.

If the owner of an estate convey it in trust for the benefit of his family, and then sell it, is the purchaser entitled to it? If so, is there any exception to the rule?

Is a purchaser bound to take a conveyance executed by the attorney of the vendor under a power of attorney with any and what form of condition?

Is the tenant for life, or who else, entitled to the custody of the title deeds?

What is a defeazance, and in what cases is it usually required and executed?

Of what do great and small tithes consist? and what is a modus, and what a tithe rent charge?

What instruments can be stamped after they are executed, and on what terms?

When is real estate considered as personal, and personal as real?

Can a deed be altered after it has been executed by all or any of the parties? and if so, to what extent?

Can a lessee for 999 years grant a lease for life? Give the reason for your answer.

Can a mortgagee in possession whose estate is absolute at law, cut down timber?

Where a lessor brings an action of ejectment for non-payment of rent reserved by lease for want of sufficient distress on the premises, and obtains judgment and possession under an execution, can the lessee obtain relief at law or in equity?

IV. Equity and Practice of the Courts.

State some of the cases in which a Court of Equity exercises control over proceedings in the Courts of Law, and the mode in which such control is usually exercised?

Under what circumstances will a Court of Equity supply defects in the substance or in the execution of deeds executed.

What rules do Courts of Equity observe regarding the enforcement of contracts entered into by infants, married women, and lunatics respectively?

State the nature and objects of a bill of interpleader, and what is specially required upon the filing of such a bill.

In what circumstances should recourse be had to a bill to perpetuate testimony; and in what cases is it that evidence taken under such a bill cannot be afterwards used?

State the nature and objects of a bill of dis-

covery, and what is the rule regarding the costs of such a bill?

What is the effect upon the remedies of creditors of a decree in a creditors' suit?

In what cases is service of a subpœna upon the party required, and in what cases may it be served upon the solicitor of the party?

If a defendant, having been served with a subpœna to appear and answer a bill, do not appear in due time, what are the steps which the plaintiff should take?

In what cases is it unnecessary for the plaintiff to require a party defendant to appear to and answer the bill, and what is the practice in such cases?

Where a party defendant is served with a copy of the bill, and is not required by the plaintiff to appear to and answer the same, in case such party defendant desires the suit to be prosecuted against himself in the ordinary way, what steps must he take, and what is the rule regarding his costs?

Under what circumstances can a plaintiff, desirous to amend his bill, obtain an order of course for leave to amend; and if he apply for a special order, what is the effect of the affidavit he must make?

What is the effect of a traversing note?

State the proceedings which may be taken for enforcement of an order of the Court of Chancery directing a party to pay a sum of money?

What is the proper course to be pursued when a party is not satisfied with the Master's decision,—having reference to what should be done both before and after the report?

V. Bankruptcy and Practice of the Courts.

When were the three principal Statutes now in force for consolidating and amending the Laws relating to Bankrupts, and for establishing a Court of Bankruptcy, respectively passed?

State, generally, the description of persons subject to the Bankrupt Laws; and say whether those laws do or do not, extend to aliens, to denizens, and to women?

Are peers of the realm and members of the House of Commons liable to the Bankrupt Laws? and are there any circumstances under which an executor or trustee, an infant, or a married woman, can be made a bankrupt? If so, state the circumstances in each case.

Can a second fiat in bankruptcy be prosecuted against an uncertificated bankrupt? If not, why not?

What steps must a creditor take in order to make a trader debtor a bankrupt under the 1 & 2 Vict. c. 110, (the act for abolishing arrest on mesne process,) and under the 5 & 6 Vict. c. 122? and what amount of debt is necessary, in either case, to enable the creditor to avail himself of the provisions of the act?

What is the mode of proceeding to obtain a fiat in bankruptcy? And what are the essential requisites to sustain a fiat?

Are any, and what, persons incompetent as witnesses to prove the constituent parts of the bankruptcy?

What is the lowest amount of debt which must be due to a single creditor, or to two creditors (not partners), to sustain a fiat?

If, after a docket struck, a trader should pay or give security for the petitioning creditor's debt, what consequences would follow, 1st, as regards the fiat; 2nd, as regards the petitioning creditor?

How, when, and by whom, are the official assignees and the creditors' assignees respectively appointed? and what are their respective duties?

If one of several parties to a bill of exchange become bankrupt, to what extent can the holder prove and receive dividends under the fiat in respect of such bill?

What steps must be taken by a creditor who holds a mortgage security in order to render his security available, and prove for the deficiency? and is there any, and what, difference between the rights and remedies of a legal and those of an equitable mortgagee with, and one without writing?

What is the general rule with regard to the effect of the bankruptcy upon the real and personal property of the bankrupt? and is there any, and what, exception therefrom with regard to property of which the bankrupt is lessee? and what course must the assignees pursue with regard to property of the latter description?

What are the general rules with regard, 1st, to property of *others* which may be in the possession of *the bankrupt*, and 2nd, to property of *the bankrupt* which may be in the possession of *others* at the time of the bankruptcy?

What is necessary to be done by the assignee of a debt or other chose in action, and for what reason, in order to render the assignment effectual in case of the bankruptcy of the assignor?

VI. Criminal Law and Proceedings before Magistrates.

State what constitutes the crime of burglary at Common Law; and is that offence extended, and in what respect, by statute?

What description of false representation constitutes the offence of obtaining money or property by false pretences?

State when the taking and fraudulent appropriation of property by one who had lawful possession of it amounts to larceny; and give instances.

Define the offence of embezzlement, and state what evidence must be adduced in support of an indictment for such an offence?

On an indictment and conviction for arson, does the punishment differ in cases where the premises are inhabited or not?

By what evidence is it necessary that the crime of perjury should be proved?

State the course of proceeding against a person accused of an offence, in order to bring him to trial?

By what authority do justices of the peace exercise jurisdiction in criminal matters?

State the distinction between a petty sessions, a special sessions, and a general sessions.

Are the times for holding these sessions, or either of them, fixed? and if so, by what authority?

Mention some of the duties of magistrates in such sessions respectively.

If magistrates exceed their authority, what is the remedy of the party injured, and what preliminary steps should be taken?

Is there any right of appeal in criminal cases, and what is the mode of proceeding to exercise that right?

State what indictable offences are bailable, distinguishing those for which magistrates may take or refuse bail at their discretion, and those for which they must take bail.

What costs and expenses of a prosecution are allowed, and how are they defrayed?

COPYHOLD ADMISSIONS AND STAMPS.

To the Editor of the Legal Observer.

Sir,—Your Correspondent "E. C. E." assumes, that I had forgotten the provisions of sec. 88 of the Enfranchisement and Commutation Act, but judging from the Forms we have each sent you, the inference would be that I had not, but that he had, forgotten those provisions.

I take it to be one of the most useful rules in conveyancing, to insert nothing without an object, and the deviation from that rule, often creates doubts which would not otherwise exist.

As the section referred to rendered the place of admission unimportant, I deemed it needless to state the place, whilst E. C. E. no less than three times refers to the place of admission. I think the reference not simply useless but objectionable, as it gives rise to the three questions,—1st. Whether some custom may not exist which renders the place important. 2ndly. Whether the act rendered such custom inoperative; and 3rdly. Whether, assuming the custom to be good, the admission was granted at a proper place.

So much for the particular point with which E. C. E. started, but as he wishes for my opinion as to the Form sent by him, I give it.

The place of admission should not be stated. The description of only "child" should be inserted, except in case of a daughter, or where custom entitles all the children to claim irrespective of sex. The words "according to the custom of the manor" after "heir," should be omitted, except where there is a different claimant for admission than that at common law. The words "*H. L.*, Lord of," should be omitted. The reference to the act is, I think, objectionable, or at all events useless. Had there been provisions in the act like those in the Lease and Release Act, giving a different operation to a document made in pursuance of the act, from one in the same Form not so made, the reference would be useful, but no such operation is given by the act referred to.

As your Correspondent may ask how, consistently with the rule to which I have alluded, I insert in my Form a reference to the entry of the previous admission, I just add that I do so in order to more particularly draw the attention of the steward to the previous step in the title; a careful reference to which is most useful in the preparation of copyhold abstracts.

With respect to the Form sent you by "Civis," I think there is this objection to it:—The copyholder, instead of holding by copy of Court Roll, has an admission, of which the Court Roll is merely an abstract. I think it is very desirable that the documents of title should appear fully in the Court Rolls, and that view appears to be taken by the framer of the Enfranchisement and Commutation Act; the surrenders, and not the substance of the surrenders, being required to be entered on the Court Rolls.

In accordance with this view, I adopt the practice of preparing the admission out of Court, and the entry in the Rolls, as duplicates, adding in the margin of the Court Roll a statement of the names of the parties under whom and by whom admission is taken, for reference and index; and a memorandum of the date of the delivery of the admission, and of the party to whom delivered.

Dec. 23, 1848. R. R.

Sir,—Referring to the letter of E. C. E., in your number of the 23rd Dec., I beg to observe that your correspondent has established the propositions advanced by me in my former communication, *except as to the stamps on admissions out of Court*, on which point I join issue with him.

E. C. E. will permit me to remark, that the Stamp Act of 55 Geo. 3, in assessing a duty on admissions *out of Court*, could only have contemplated such admissions as were taken at special, and not the ordinary Courts, where no other manor business could be transacted, inasmuch as until the passing of the 4 & 5 Vict., E. C. E. must be aware, admissions could not *generally* be granted out of Court, nor out of the manor, and, as I before stated, this latter act is totally silent as to the stamp duties.

That the duty should be impressed on the steward's *copy*, and not upon the memorandum of admission, there cannot be the shadow of a doubt, and this practice has always been adopted in the manor (rather a large one) with which I am connected. Indeed, a perusal of the 23rd section of 48 Geo. 3, (which was not repealed in this particular instance by the present Stamp Act,) will prove to E. C. E. that a steward is liable to a penalty of 50*l.*, if he does not, within four months after surrender, *admittance*, voluntary grant, and license, *make out a copy of Court Roll, duly stamped*, and deliver the same to the party entitled. It seems to me, therefore, clear that the stewards' *copies* of admission, whether now made in or

out of Court, require to be stamped, and if E. C. E. still differs with me as to the correctness of my views, he can satisfy himself by a reference to Scriven and other authorities on the subject.

A Steward's Clerk.

NOTES OF THE WEEK.

SITTINGS OF THE EQUITY COURTS.

It is now understood that the Courts of Equity will continue to sit at Lincoln's Inn until the close of the Hilary Vacation, and that the sittings at Westminster Hall will be resumed on the 16th April, the first day of Easter Term. This arrangement is a concession to the wishes of all branches of the profession, and the announcement cannot fail to afford satisfaction.

HILARY TERM EXAMINATION.

The examination took place at the Incorporated Law Society's Hall, on Tuesday last, the 23rd January. Mr. Walker of the Court of Exchequer presided, and the other examiners were Mr. Austen, the president of the Society, Mr. William Tooke, Mr. A. W. Grant, and Mr. John Young. Ninety-nine candidates attended, two of whom withdrew during the examination: 89 passed; and 8 were postponed.

SITTINGS IN BANCO AFTER TERM.

In order, if possible, to prevent the accumulation of arrears, the Court of Exchequer has announced its intention of Sitting in Banco after Term continuously, from the 5th of Feb. to the 28th of Feb. inclusive; with the exception of one day (the 7th Feb.) It was notified, however, that after the Nisi Prius Sittings at Guildhall commence, the Court would confine itself to the Demurrer Paper, so as to avoid interfering with the engagements of the leading counsel at Nisi Prius.

SPRING CIRCUITS.

Western.—Lord Denman and Mr. Justice Williams.

Midland.—Lord Chief Justice Wilde and Mr. Justice Maule.

Norfolk.—The Lord Chief Baron and Mr. Baron Rolfe.

Home.—Mr. Baron Parke and Mr. Justice Wightman.

Northern.—Mr. Baron Alderson and Mr. Justice Coleridge.

Oxford.—Mr. Justice Coltman and Mr. Baron Platt.

North Wales.—Mr. Justice Cresswell.

South Wales.—Mr. Justice Erle.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Dec. 26th, 1848, to Jan. 19th, 1849, both inclusive, with dates when gazetted.

Bloxsome, Edward, jun., and Alfred Jackson, Dursley, Attorneys and Solicitors. Jan. 16.

Bubb, John, Robert Sole Lingwood, and Benjamin Bubb, Cheltenham, Attorneys and Solicitors. Dec. 26.

Coulthard, Ralph, and Richard Cautley Cross, Kirkby Stephen, Attorneys and Solicitors. Dec. 26.

Fletcher, George Charles, and James Baker Roberts, Wandsworth, Attorneys and Solicitors. Jan. 16.

Gunning, Charles, and William Coleman Gill, Bath, Attorneys and Solicitors. Jan. 5.

Jacobson, William, and Thomas Phillips, Plymouth, Attorneys, Solicitors, and Conveyancers. Jan. 16.

Parker, Henry, Thomas Jas. Rooke, Richard Stephens Taylor, and Henry Parker, jun., 17, Bedford Row, Attorneys and Solicitors. Jan. 2.

Ransom, Robert, and Henry Tiffen, Sudbury, Attorneys and Solicitors. Jan. 5.

Robinson, John Moore, and Thomas Ingram, Leicester, Attorneys, Solicitors, and Conveyancers. Jan. 16.

Welsby, William, and Richard Johnson, Southport, Attorneys and Solicitors. Jan. 9.

MASTERS EXTRAORDINARY IN CHANCERY.

From Dec. 26th, 1848, to Jan. 19th, 1849, both inclusive, with dates when gazetted.

Carter, Alfred, Coventry. Dec. 29.

Langdon, William Spicer, Chard. Jan. 5.

Ley, William Merriman, Bishop's Stratford. Jan. 5.

Phillips, Thomas, jun., Plymouth. Dec. 29.

Rowley, Lawrence Pemberton, Bilston. Dec. 29.

Smith, George Moore, Whittlesey. Jan. 12.

Varley, Alphonso Rowland, Bolton-le-Moors. Dec. 29.

Williams, George, Cardiff. Dec. 29.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Exparte Reavely, In re the North of England Joint-Stock Banking Company. Jan. 11, 1849.

CONTRIBUTORY.—JOINT-STOCK COMPANIES' WINDING-UP ACT.

A father, who had purchased shares in a banking company for his son, misrepresenting him as of age, and afterwards covenanting by deed that his son should perform the requirements of the directors, is liable as a contributory, under the 3rd section of 11 & 12 Vict. c. 45, by the words "or otherwise howsoever."

THOMAS REAVELY, in 1838, purchased 56 shares in a joint-stock bank for his son, (who was then a minor,) at the direction of the child's grandmother, and the minor was duly registered as proprietor. When the minority was discovered, the father, at the request of the directors, covenanted, by a deed, in 1842, to indemnify them against all costs, and to pay the calls on the present or any future shares. Ten other shares were afterwards purchased for the son. The company having become insolvent, it was resolved to wind up their accounts, under the 11 & 12 Vict. c. 45, and a reference had been made to Master Farrer, who held, upon a question whether the father was a "contributory" liable to the debts of the bank, that he came under the third section as a person liable to contribute to the payment of debts, "or otherwise howsoever liable," and he was put on the list of contributories.

The motion before the Vice-Chancellor Knight Bruce, on the 21st December, 1848, to reverse this decision of the Master, and strike out the name of Thomas Reavely, having been refused, this appeal was made.

J. Russell and *Manisty* appeared for the appellants; *Bacon* and *Headlam* for the respondents.

The *Lord Chancellor* confirmed the view taken by Master Farrer and the Vice-Chancellor. Thomas Reavely had purchased the shares for his son with the grandmother's money, and had wilfully misrepresented his son to be of age, and in consequence of that misrepresentation the minor had been registered as the proprietor. The father had executed the indemnity deed, undertaking that the son should perform whatever he might have been called upon to do had he been of full age. He had thereby rendered himself liable, under the 3rd section of the act, which enacts, *inter alia*, that "the word *contributory* shall include every member of a company, and also every other person liable to contribute to the payment of any of the debts, liabilities, or losses thereof, whether as heir, devisee, executor, or administrator of a deceased member, or as a former member of the same, or as heir, devisee, executor, or administrator of a former member of the same, deceased, or *otherwise howsoever*." There is no doubt but that the father was included in the words "or otherwise howsoever," and in consequence liable to contribute to the debts of the company.

Appeal dismissed with costs.

Stewart v. *Forbes.* Jan. 13, 15, 1849.

DECREE BY CONSENT.—APPEAL.

Where a decree has been made by consent, the parties are precluded from appealing for the purpose of procuring an issue to a jury, but are entitled to a re-hearing, if the case can be disposed of without an issue at law.

THIS was a petition of re-hearing or appeal from a decree of the Vice-Chancellor of England, who being of opinion that the case could not be disposed of without an issue to a court of law upon certain facts in dispute, the parties consented that his Honour should take upon himself the duty of deciding on the issue.

J. Parker, Rolt, and *A. Smith,* appeared for the appellant; *Bethell,* contrà.

The *Lord Chancellor* held, that so much of the petition as applied to the decision of the Court below on the matter of the issue should be dismissed with costs: the consent of the appealing party, as stated in the decree, precluding them from having the issue at law; but if the appellants desired to have a re-hearing in order to dispose of the case without the verdict of a jury, they were entitled thereto.

Jan. 18.—*Lord Brooke* v. *Earl of Warwick*—Appeal dismissed with costs.

— 18.—*Davis* v. *Chanter*—Reference to the Master: Appeal to stand over until the report made.

— 18.—*Exparte Glaholme, In re Joint-Stock Companies' Winding-up Act; and In re the North of England Banking Company*—Appeal dismissed with costs.

— 19, 20.—*The Queen* v. *Prosser*—*Cur. ad. vult.*

— 20.—*Warde* v. *Warde*—Decision of the Court below reversed.

— 13, 20.—*Fyson* v. *Pole*—Suit abated by death of plaintiff.

— 20.—*Henderson* v. *Eason*—Stand over.

— 23.—*Reg.* v. *Prosser*—Appeal dismissed.

— 23.—*Warde* v. *Warde*—The question of costs to stand over.

— 19, 24.—*Attorney-General* v. *Wilson; In re Lady Hewley's Charity*—Stand over.

— 20, 24.—*Davis* v. *Kingsford*—Bill dismissed by consent without costs.

— 23, 24.—*Corporation of Rochester* v. *Lee*—Part heard.

Rolls Court.

Smith v. *Oliver.* Jan. 20, 1849.

TRUST TO BUILD ALMSHOUSES.—WHEN THE ATTORNEY-GENERAL NEED NOT BE A PARTY.

THE testator, by his will, bequeathed stock to the amount of 2,000*l.* to the plaintiff, for life, and at her decease to the churchwardens and overseers of Tottenham, Middlesex, in trust to apply 800*l.* in the erection of six almshouses for six poor persons, and the dividends of the residue to be applied weekly for their maintenance.

Turner and *Forster* for the plaintiff; *Koe* for the defendant.

The *Master of the Rolls* held, that as the churchwardens and overseers were expressly mentioned in the will, it was unnecessary to make the Attorney-General a party; and that, inasmuch as the almshouses could not be erected, and no one could reside in them, the 800*l.* and the residue of the 2,000*l.* would fall into, and become part of, the residuary estate, and belong to the plaintiff.

Jan. 18.—*Page* v. *Broom*—Reference to the Master.

— 18.—*Attorney-General* v. *Monpesson*—Master's report for charity scheme confirmed.

— 18.—*Lucena* v. *Parkes*—The policy of insurance ordered to be kept up for the benefit of the creditors—Reference to the Master, if the parties so arrange.

— 19.—*Mitchell* v. *Koecker*—*Cur. ad. vult.*

— 19.—*Corragio* v. *Lee*—*Cur. ad. vult.*

— 20.—*In re Harwood*—Judgment in favour of the annuity of the petitioner.

— 22, 23, 24.—*Hooper* v. *Salmon*, *Tugwell* v. *Hooper*—*Cur. ad. vult.*

— 24.—*Sanderson* v. *The Cockermouth and Workington Railway Company.*—Part heard.

Vice-Chancellor of England.

Blagrove v. *Hancock.* Nov. 22, 1848.

WILL.—EXECUTORY DEVISE.—VOID FOR REMOTENESS.

A testator gave his real and copyhold estates to trustees on trust, to apply the rents for the maintenance of A., *and his present and future grandchildren, during the life of* A., *and on the death of* A., *in trust to convey the same to the use of all his present and future grandchildren, as they should attain* 25, *as tenants in common:* Held, *that the devise to the grandchildren was void for remoteness.*

A testator by his will, dated in 1834, devised as follows:—"I give and devise my freehold and copyhold property to trustees in trust, to receive and apply the rents and profits to the support of my dear wife, Harriet, and my present and future grandchildren, during the life of my said dear wife, and immediately on her decease upon trust to convey and surrender such freehold and copyhold property to the use of *all my present and future grandchildren* as they shall respectively attain the age of 25, years, to hold the same to the use of my said grandchildren as tenants in common." The question was, whether this was a vested gift in the grandchildren.

Mr. *Stuart* and Mr. *Chichester* contended, that the devise was to a class of takers, some of whom might not be capable of taking within the period prescribed by law, and therefore the devise was void altogether. *Porter* v. *Fox*, 6 Sim. 485; *Leake* v. *Robinson*, 2 Mer. 363; *Walker* v. *Shore*, 15 Ves. 122.

Mr. *Bethell* and Mr. *Murray*, contrà, argued, that the plain construction of the will was, that the property vested an interest in all the grandchildren immediately on their birth, subject to be divested on their not attaining 25, and that the direction to convey was merely a direction when they should have the enjoyment of the property. They cited *Goodtitle* v. *Whitby*, 1 Bur. 229; *Boraston's case*, 2 Coke; *Phipps* v. *Ackers*, 9 Cl. & Fin. 583; *Jackson* v. *Majoribanks*, 12 Sim. 93; *Milroy* v. *Milroy*, 14 Sim. 48; *Jarman on Wills*, 1 vol. p. 233.

The *Vice-Chancellor*, after reading the words of the will, said:—The settled rule of law in an executory devise was, that it must be in such a form as that those to take under it must be born within a life in being and 21 years afterwards, and nothing was more obvious in the present case, than that none of the grandchildren who were in *esse* at the time when the testator made his will, might ever become the objects of the gift, they might all die in his lifetime, and it was within the sphere of the possibility contemplated by the testator that there might be more to take, than those who should have been born after the death of the testator, and consequently there might be some of the grandchildren born during the lifetime of the tenant for life, who might not attain the age of 25, until more than 21 years after the death of the tenant for life, and possibly the class of takers might be solely composed of such. His opinion, therefore, on the deliberate view of the words was, that it would be doing violence to the rule of law, which was clearly established by Sir William Grant in *Leake* v. *Robinson*, where his attention was expressly called to the subject; it was there said to him that there were some who by possibility might take; his answer was, there were some who might not take: the devise to the grandchildren was therefore void for remoteness.

Jan. 18.—*Bates* v. *Grace*—Injunction granted without directing another action.

— 19.—*Chinchase* v. *Simpson*—Judgmen on construction of will.

— 19, 20.—*Mowatt* v. *West Cornwall Railway Company*—Injunction dissolved, so far as to staying trial, the rest to stand over, with leave to apply to dissolve.

— 20.—*Marshall* v. *Scott*—Motion to enter up execution upon judgment in an action, dismissed with costs.

— 22, 23, 24.—*Coleman* v. *Mellersh*—Part heard.

Vice-Chancellor Knight Bruce.

Exparte Spackman, In re the Agriculturist Cattle Insurance Company. Jan. 12, 1849.

JOINT-STOCK COMPANIES' WINDING-UP ACT.—CATTLE INSURANCE COMPANY.

No order of reference will be made under the Joint-Stock Companies' Winding-up Act, except in a very clear case and one free from difficulty.

Semble, *that a company for the insurance of animals is not within the act.*

THIS company was projected in 1845, for the insurance of all animals—being property or live stock belonging to farmers, keepers of exhibitions of animals, or others, whether kept for pleasure or profit, against loss from mortality caused by disease, or by slaughter in consequence thereof, or without apparent cause. The directors were also, by the deed of settlement, empowered to grant assurances on human lives, life annuities, endowments, insurances of ships and vessels with or without their cargoes. A petition was now presented by George and Joseph Spackman, two of the contributories, for the dissolution and winding-up of the company, under the 11 & 12 Vict. c. 45.

Swanston and *Collins* for the petitioners; *Russell* and *Prior*, contrà.

The *Vice-Chancellor* held, that the company did not come within the scope of the act, which ought only to be put in force in cases which were clearly contemplated thereby; citing *In re the Herne Bay Pier Company*, V. C. Knight Bruce, 15th Dec., 1848; and dismissed the petition with costs.

Exparte the Incumbent of Brompton, In re the Kensington Charities. Jan. 12, 1849.

CHARITABLE BEQUEST.—APPORTIONMENT.

Certain charities were held *not apportionable, under section* 22 *of* 8 *&* 9 *Vict. c.* 70, *and others apportionable, and reference as to rest made to the Master.*

Quære, *whether the distribution of the fund apportioned is to be made by the incumbent alone, or in connection with the churchwardens.*

THIS was a petition for the apportionment of certain charities, (amongst others, Lord Camden's and Lady Camden's gifts,) given to Kensington parish, among the several districts of that parish, according to the Church Building Acts.

The *Vice-Chancellor* held, that Lord Camden's gift was not a charitable devise, bequest, or gift, made, or given to, or for the use of the parish, within section 22 of the 8 & 9 Vict. c. 70; but that Lady Camden's gift was apportionable under the act. It was by no means clear that the amount under an apportionment to a district was to be applied by the incumbent of the district church. As, however, there was not sufficient information to enable the Court to decide whether certain of the charities were apportionable or not, a reference as to them must be made to the Master, to make inquiries and to report thereon.

Jan. 18.—*Ingram* v. *Strange*—The motion for injunction to stand over, with liberty to bring an action—the defendant undertaking, without prejudice, to discontinue the use of the mark objected to.

— 18.—*Cridland* v. *Lord de Mauley and others—The Bridgwater Railway Company* v. *The Midland Railway Company*—Motion for the production of documents refused, except as regarded those in the possession of one of the defendants.

— 19.—*In re Kolman's Railway Locomotive and Carriage Improvement Company*—Reference of winding-up to the Master.

— 19.—*Gregson* v. *The East Anglian Railway Company*—Demurrers to the bill overruled. Costs reserved,

— 19.—*Feversham* v. *Cameron's Coalbrook Steam Coal, and Swansea and Lougher Railway Company*—Demurrer for want of equity allowed, with leave to amend and costs reserved.

— 22.—*Cooper* v. *Shropshire Union Railway and Canal Company*—Demurrer for want of equity allowed.

— 23, 24.—*Howard* v. *Carr*—Part heard.

— 24.—*Exparte Miller, in re Swann*—Petition dismissed, with leave to file a bill.

— 24.—*Exparte Pennell, In re Turner*—Petition dismissed with costs.

— 24.—*Exparte Hookins, in re Gundry*—Proof of three bonds to be admitted—Decision of Bankrupt Commissioner reversed.

Vice-Chancellor Wigram.

Feversham v. *Camerons, In re Coalbrook Steam Coal, and Swansea and Lougher Railway Company.* Jan. 9, 1849.

RAILWAY CONTRACT.—LIEN ON CALLS.

A contract to supply funds to a company is within section 29 *of the* 7 *&* 8 *Vict. c.* 110; *and a contract for such purpose, not submitted to, or confirmed by, the shareholders, under that section,* held *void.*

Injunction dissolved, restraining payment of calls to other than certain parties under the contract.

THE plaintiffs had, on the 29th December, obtained an injunction *exparte*, restraining the defendants, and all persons other than the Commercial Bank of London, from receiving the moneys on account of calls on the shareholders. The plaintiffs, who were directors of the company, had contracted to advance certain monies on the promissory note of the company, and with a lien on all calls made on the shareholders. The directors having advanced a large sum, refused to fulfil their contract of lending monies from time to time, amounting in the whole from ten to fifteen thousand pounds; but filed their bill for the payment of the balance stated to be due to them.

The *Solicitor-General*, *Russell*, and *W. W. Cooper*, appeared to dissolve the injunction on behalf of the company; *Swanston* and *Prendergast*, contrà, for the plaintiffs.

The *Vice-Chancellor* said, that the object of the statute 7 & 8 Vict. c. 110, s. 29, was to protect the shareholders and to relieve them from unauthorized acts of directors. The section enacted, "that if any contract or dealing (except a policy of insurance, grant of annuity, or contract for the purchase of an article or of service, which is respectively the subject of the proper business of the company, such contract being made upon the same or the like terms as any like contract with other customers or purchasers,) shall be entered into, in which any director shall be interested, then the terms of such contract or dealing shall be submitted to the next general or special meeting of the shareholders to be summoned for that purpose; and that no such contract shall have force until approved and confirmed by the majority of votes of the shareholders present at such meeting." Here, however, the contract had not been submitted to, or confirmed by, the shareholders, although two general meetings had been held. It therefore was void: contracts for supplying funds to the company being within the 29th section.

Injunction dissolved, with costs.

Martinez v. *Winstanley*. Jan. 12, 1849.

LIEN.—TITLE-DEEDS DEPOSITED AS SECURITY.

Title-deeds deposited with the plaintiffs as security for the general balance of all monies due from the defendants, or either of them, on any account whatsoever, held, *after the death of one of the depositors, subject to a lien for payment of the general balance of debts contracted, as well after, as before, the decease of the party.*

THE petition to the bill in this case prayed a decree for sale, and payment out of the proceeds of the balance due from the defendant. It appeared that the defendant and a deceased brother had deposited certain title-deeds of property near Liverpool, and had expressly charged their interests in the same with the payment "of the general balance of all monies that" then were, or might thereafter "become due to" the plaintiff's "house of business" from them or either of them, "on any account whatsoever." One of the mortgagors had afterwards died.

The *Solicitor-General* and *Waley* for the plaintiffs; *Wood* and *Goodeve* for the defendant.

The *Vice-Chancellor* held, that the words in the memorandum of deposit were sufficiently extensive to confer a lien on the entire property, deposited, for the balance as well of the debts contracted by the surviving brother after the decease of the other brother, as before his death.

Jan. 18.—*Derbishire* v. *Home*—Order for payment of money into Court—The motion for payment of the dividends refused for the present.

— 18.—*Chant* v. *Brown*—Exceptions to Master's report allowed.

— 19.—*Exparte Gaffee's Settlement*—Judgment on construction of marriage settlement.

— 23.—*Evans* v. *Protheroe*—Perpetual injunction—Costs generally, including those of the issue, to be paid by the defendants.

Court of Queen's Bench.

(Before the Four Judges.)

Reg. v. *Bishop of Exeter*. Jan. 15, 1849.

QUARE IMPEDIT.—TRIAL BY LORDS SPIRITUAL.—PRACTICE.

In an action of quare impedit, *this Court directed a writ to be sent to the Ecclesiastical Court, to inquire into the truth of an issue raised by the pleadings.*

In an action of *quare impedit* by the Crown against the Bishop of Exeter, for refusing to induct a gentleman, named Gorham, into a living in the diocese of Exeter, the bishop pleaded, that he had examined Mr. Gorham, and that he "held, maintained, and affirmed certain unsound doctrines and opinions, contrary to the true Christian faith; to wit, that spiritual regeneration was not given or confirmed by the sacrament of baptism, and that infants were not thereby regenerate, which unsound doctrine he, the said Mr. Gorham, did hold and affirm." And the plea went on to allege, that by reason of the maintenance of these doctrines Gorham was unfit to be inducted into the living, and that the bishop had accordingly refused to induct him. The replication affirmed that he was not unfit, and did not maintain unsound doctrines.

The *Attorney-General*, on the part of the Crown, suggested, that the issue raised upon these pleadings could only be tried by Lords Spiritual, and that the practice was for the Court of Law to direct a writ to the primate to examine the clerk, and make his return to the Court. If the clerk accused of unsound doctrines should be dead, the question must be tried by a jury, but if alive, it was to be decided by the metropolitan himself. This doctrine was laid down in "Rolls' Abridgment," title, "Trial by Lords Spiritual," and in 5 "Coke's Report," 117. The only other question was, whether it should be a rule absolute, or to show cause. He did not see how it could be the latter, because it was only upon their lordships' reading the record that the writ was to issue. He therefore moved for a writ directed by the Court to the Archbishop of Canterbury, calling upon him to inquire into the truth of the issue raised by the pleadings.

The *Court* directed that the rule absolute should not issue for three or four days, in order that it might be ascertained whether the Bishop of Exeter concurred in the application. If nothing further was heard on the subject,

the rule was to be considered as absolute at the end of four days.

Reg. v. *Brent, Steward of the Palace Court.*
Jan. 18, 22, 1849.

PALACE COURT.—RIGHT OF ATTORNEYS OF THE SUPERIOR COURTS.

Mandamus to the Judges of the Palace Court to show cause why an attorney of the Superior Courts should not be admitted in the Palace Court, pursuant to 6 & 7 Vict. c. 73, s. 27.

The rule *nisi* granted last term for a *mandamus* to be directed to Mr. Brent, the Steward of the Palace Court, commanding him to admit Mr. Jaquet as an attorney of that Court, which rule was founded on the 27th section of the 6 & 7 Vict. c. 73, which enacts, that every person who has been admitted an attorney of one of the Superior Courts at Westminster, shall, on the production of his admission, or a certificate thereof, be entitled to be admitted in any other of the said Courts, "or in any Inferior Court of Law in England and Wales, upon signing the roll of such Court," was opposed on two preliminary grounds:—namely, that Mr. Jaquet should have applied for admission to the Lord Steward and Knight Marshal, who were created judges of the Court by the charter of Charles, instead of to the deputy-steward or judge of the Court; and secondly, although the applicant stated that he had made and filed an affidavit, he did not say where it was filed.

In reply to the first of these objections, it was contended, that the power to admit an attorney to practise was a mere ministerial power which might be exercised by any one of the judges. Now the Lord Steward, the Knight Marshal, were all judges of the Court, and Mr. Jaquet gave notice of his application to all, though his application was made to the steward of the Court, and that officer stated in his judgment, that he had proof of the admission of Mr. Jaquet as an attorney of the Superior Court, but that he must refuse the application, as he entertained doubts as to whether the act applied to the Palace Court, and in order that the right of admission thus refused might be determined by this Court.

Sir *F. Thesiger*, with Mr. *R. Gurney*, Mr. Corrie, and Mr. *P. Taylor*, appeared to show cause against the rule, and Mr. *M. D. Hill* with Mr. *Pulling*, in support of it.

The *Court* made the rule absolute for a *mandamus*, in order that the question might be fully discussed upon the return.

Jan. 18.—*Cudeby* v. *Esthall*—Rule *nisi* for new trial, on the ground that the verdict was against evidence.

— 18.—*Briggs* v. *The Merchant Traders' Loan and Insurance Company*—Part heard.

— 19.—*M'Swinney* v. *The Directors of the Royal Exchange Assurance Company*—*Cur. ad. vult.*

Jan. 22.—*Doe d. Howe* v. *Thornton*—Rule *nisi* for setting aside verdict and entering nonsuit.

— 22, 23.—*Shaw* v. *The Directors of the York and North Midland Railway Company*—*Cur. ad. vult.*

— 23.—*Jones* v. *Hall*—*Cur. ad. vult.*

— 24.—*Smith* v. *The Queen*—Part heard.

Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

Bryne v. *Knipe.* Nov. 21 and 22, 1848.

COUNTY COURTS JURISDICTION.

On a proceeding under the 98th section of 9 & 10 Vict. c. 95, the jurisdiction of the County Court extends to cases where the gross sum due on the prior judgment and the costs thereof exceeds 20l.; and it is no objection that the summons is issued for a sum not exceeding 20l., if it be made up of the debt and costs of the prior judgment.

THIS was a rule calling on the plaintiff to show cause why a prohibition should not issue to the judge of the County Court of Clerkenwell, to restrain him from proceeding any further with this suit. It appeared by the affidavits, that in January, 1848, a plaint was entered in the above Court against the defendant, the claim being 20*l.* for rent. On the 15th of February the case was heard, when the defendant objected—that an action was pending against him in the Court of Exchequer, at the suit of the plaintiff, on a promissory note for 30*l.* The consideration for his giving such, was the rent in question. The judge thought that his jurisdiction as to the plaint before him for the rent, was not taken away by the action in the Exchequer on the promissory note, and gave judgment for the plaintiff, and ordered payment to be made within a week of such time as the action in the Exchequer should be discontinued. Subsequently the plaintiff took out a rule to discontinue the action in the Exchequer, and appeared before the judge of the County Court and satisfied him that the order was discontinued, and he ordered payment in a week. The defendant, however, did not pay the debt or costs of the suit in the County Court, nor was any execution issued upon the judgment there obtained, but on the 24th of March, the plaintiff issued a summons against the defendant, under the 98th section of 9 & 10 Vict. c. 95. This summons was for the 20*l.* debt, and 2*l.* 7*s.* 6*d.* costs. At the hearing the judge rescinded his former order as to the payment of the amount within a week, but gave judgment for the plaintiff for the gross sum (made up of the debt and costs of the first suit) of 22*l.* 7*s.* 4*d.*, and 1*l.* 10*s.* 4*d.* costs, and ordered the defendant to pay the same by instalments of 15*s.* every four weeks. The present rule was obtained on two grounds—*first*, that the judge had no jurisdiction at the time of the hearing, as there was an action pending for the same cause of action in the Exchequer; *secondly*, because, upon the second summons, the amount sought to be recovered exceeded 20*l.*

Wilmore showed cause on affidavits, which brought before the Court verified copies of the plaint, and all the subsequent proceedings in the County Court, from which it appeared that the practice in entering a judgment-summons issued under the 98th order of the act, is not to separate the debt from the costs, but to add them together; that had been done in the present case, and so the summons appeared to be for 22*l.* 7*s.* 4*d.*; but it was contended that it was manifest that the original sum claimed was only 20*l.*, and therefore there was no ground for saying that the jurisdiction had been exceeded; he also contended, that the judge had acted quite rightly, and had not exceeded his jurisdiction in the course he had taken.

Bagley, contrà, contended, that the original judgment was bad, as it depended upon the conclusion of the action in the Superior Court; and secondly, that the judge had no jurisdiction as to the second proceeding taken under the 98th section, as the plaint was entered for more than 20*l.*

Patteson, J. This rule must be discharged, in my opinion. Now all the facts are fully before the Court, the case is perfectly clear. The Court only interposes by prohibition, where the inferior Court has no jurisdiction. Looking at the facts here, it is plain there was authority. The defendant alleged that there was another action pending for the same cause. The judge properly decided that his jurisdiction was not, in truth, in respect of the same causes of action. He seems, however, to have thought they were substantially the same, and therefore postponed execution. That which has been called a contingent judgment is only an order as to the period of execution. Subsequently the action was discontinued, and the judge of the County Court appears to have been satisfied of this; but no execution then issued, but a summons was applied for under the 98th section. This, in the court book, is called a plaint, but it is not strictly *eo*; and although the judgment is entered for 22*l.* 7*s.* 4*d.*, yet it was clear how it was made up. It is not a fresh suit for a sum more than 20*l.*, but a proceeding under the 98th section. There is then an order for payment by weekly instalments; and to make this order operative, the former order was rescinded. This was the correct course, and the proceedings were clearly not an excess of authority.

Rule discharged with costs.

Jan. 20.—*Jones* v. *Pritchard*—Rule *nisi* for staying six actions until trial of seventh granted.

— 22.—*Quick* v. *London and North Western Railway Company*—*Cur. ad. vult.*

— 23.—*In re John Evans*—Rule *nisi* to strike attorney off the Roll on the application of the Law Society.

— 24.—*Exparte Loman*—Rule *nisi* for payment of money for extinguishing a fire.

— 24.—*Reg.* v. *Drouet*—Certiorari to remove the depositions before the coroner into this Court, granted.

NISI PRIUS.

Jan. 19.—*Denman* v. *Turner, clerk*—Verdict for the plaintiff.

— 20.—*Cattley* v. *Podger*—Verdict for the plaintiff.

Court of Common Pleas.

Nash v. *Brown*. Michaelmas Term, 1843.

BANKRUPTCY ACTS, 5 & 6 VICT. C. 116, AND 7 & 8 VICT. C. 96.—ORDER FOR PROTECTION AND DISTRIBUTION.—MATERIAL DATES IN PLEA.

Where to a declaration for goods sold the defendant pleaded in bar that after the accruing of the causes of action, and before the commencement of the suit, to wit, on the 22nd of Nov., 1843, a petition had been presented by the defendant to the Court of Bankruptcy, for his protection, and a final order thereupon, to wit, on the 29th of January, 1844, granted for protection and distribution according to the statute, &c.: Held, *that the dates in such plea were material, though under a videlicet, rendering it necessary to prove a final order under the 5 & 6 Vict. c. 116, as a bar to the action, and therefore that it was good upon demurrer, notwithstanding the 7 & 8 Vict. c. 96.*

THIS was an action for goods sold and delivered. The defendant pleaded in effect, that after the accruing of the several debts and causes of action in the declaration mentioned, and before the commencement of the suit, to wit, on the 22nd day of November, 1843, a petition for the protection of the defendant from process was duly and according to the statute in such case made and provided, presented by the defendant to the Court of Bankruptcy, and thereupon afterwards, &c., to wit, on the 29th day of January, 1844, a final order for protection and distribution was made in the matter of the said petition, &c.; and that the several debts and causes of action in the declaration mentioned were contracted before the date of filing the said petition, &c. Demurrer to the plea, for amongst other grounds, that the plea did not disclose any sufficient answer to the action, for the final order in the plea mentioned must be presumed to have been made according to the statutes in force immediately before the commencement of this suit, or at the time of plea pleaded, namely, 5 & 6 Vict. c. 116, as amended by 7 & 8 Vict. c. 96, and that a final order under those statutes only protects the person of defendant from arrest for the debts and causes of action accruing before the date of filing his petition, and is no bar to an action for the recovery of such debts; that to be a good defence the plea should have distinctly alleged that the said final order was made after the passing of the former act, and before the passing of the latter act, that the said plea is uncertain and ambiguous, and might be proved by the production of a final order made after the passing of 7 & 8 Vict. c. 96, which, for the above reasons,

would not be an answer to this action; and that it is uncertain on what final order defendant relies, or under what statutes the plea is pleaded, and as the dates in the said plea are all laid under a videlicet, the plaintiff cannot tell with certainty when the said final order was made, &c.

C. Pollock, in support of the demurrer. The question here was, the construction of the two acts, the 5 & 6 Vict. 116, and the 7 & 8 Vict. c. 96. Under the operation of the 1st, 4th, and 10th sections of the former act it was conceded the plea was a good one. But the latter act materially altered the law in that respect, and in effect by the 4th and 22nd sections, did away with the provisions of the former act, and did not re-enact the provisions of the 10th section. The 4th section vested the property of the insolvent petitioner in the assignee or assignees by virtue of his or their appointment, and the 22nd section made the final order a protection of the person from process in respect of debts at the time of filing the petition; the form, too, of the final order in the schedule to the act was for the protection of persons only. The effect of the present plea, therefore, could be no more than that of an order for the protection of the person, although it alleges an order for protection and distribution. Then if that were so, the plea was no good bar to the action. *Toomer* v. *Gingell*, 3 Com. B. 322. It was right, however, to state that the authority of the latter case had been departed from by the Court of Exchequer in the cases of *Platell* v. *Bevill*, and *Jacobs* v. *Hyde*, 17 L. J., N. S., C. P. 249, where the Court decided that the effect of the final order was the same under both acts. [*Williams*, J. The dates in the plea are material, though laid under a videlicet, and if so, then the plea must be taken to be under the 5 & 6 Vict. c. 116, and therefore a good bar.] Where two statutes have been passed on the same subject, as here, it was not sufficient merely to allege that a particular act happened between the time of their passing by means only of dates laid under a videlicet. It would be extending the doctrine as to the effect of a videlicet further than had ever been done, to hold otherwise.

Petersdorff, contrà. *Ex concessio* this would have been a good plea if it had been expressly alleged that the final order had taken place after the first act, and before the second. The dates, although under a videlicet, were material, (1 Wms. Saund. 170,) and have the same effect; and if so, then upon the face of the plea it appeared that the 5 & 6 Vict. c. 116, was the statute under which the final order was made. But if the dates were immaterial, then it was submitted the plea might be said to be under either or both of the acts, and the cases in the Exchequer made available in favour of the plea. *Cooke* v. *Henson*, 1 Com. B. 588.

C. Pollock, in reply, referred to the case of *Parkinson* v. *Whitehead*, 2 Scott, N. R. 620.

Per Curiam. The allegations as to dates in the plea being necessary to be alleged, must be considered as material and traversable, though under a videlicet, and therefore the plea was good upon special demurrer. For that *Bissex* v. *Bissex*, 3 Burr. 1729, was an authority. In order to make the plea good, under either act it was necessary that it should be shown in some way that the transaction alluded to was applicable to the law which existed during the time when the transaction happened, and the plea here shows when the transaction happened, by mentioning a particular date, and that date became a material one, rendering it necessary in the present case to show that the transaction here took place under the first statute, which made the plea a good one, and before the passing of the second. Judgment therefore must be given for the defendant.

Judgment for the defendant.

Gillingham v. *Stewart*. Jan. 16, 1849.

INTERPLEADER ISSUE.—NONSUIT.

A nonsuit may be entered in an interpleader issue, where the plaintiff does not appear on the trial.

Semble, *he must apply to the judge granting the interpleader issue to remedy the consequences of his neglect in not appearing.*

THIS was an application for a new trial, on the ground of surprise, and that the nonsuit entered might be set aside. The cause, which was a feigned issue under the 1 & 2 W. 4, c. 58, (the Interpleader Act), was entered for trial at the Guildhall Sittings after Michaelmas Term. The attorney had not expected the cause to come on so soon, and had not delivered any brief. The cause being called on, and no counsel appearing, the defendant's counsel applied for a nonsuit, which was granted.

H. S. Wilde, in support of the application.

The *Court* held, that the nonsuit was properly entered, but intimated that the plaintiff, in the feigned issue, on application to the judge making the interpleader order, might be let in to try the issue on terms.[a]

Application refused.

Jan. 18.—*Smith and others* v. *Anderson*—Rule *nisi* for new trial refused.

— 18.—*Hoare* v. *Dixon*, *Hoare* v. *Dickenson*—Rule *nisi* for staying action until costs of former actions were paid, granted.

— 18.—*Anon*, *in re*, *Shaw* v. *Robinson*—Rule *nisi* for payment by attorney of costs to a witness.

— 19.—*Saunderson* v. *Dobson*—*Cur. ad. vult.*

— 18, 20.—*Beard* v. *Egerton*—*Cur. ad. vult.*

— 20, 22.—*Powell* v. *Bradbury and another*—Rule absolute for new trial on the ground that verdict was contrary to evidence and excessive damages.

— 22, 23.—*Crowl* v. *Edge*—*Cur. ad. vult.*

— 19, 24.—*The Dean and Chapter of Ely* v. *Cash*—*Cur. ad. vult.*

— 24.—*Boden and another* v. *Smith and another*—Judgment for the defendants.

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[a] See *Marks* v. *Ridgway*, *Collins* v. *Ridgway*, 34 L. O. 255.

Exchequer.

Cox v. *The Midland Rail. Co.* Jan. 17, 1849.

AUTHORITY OF RAILWAY SERVANTS—EMPLOYMENT OF SURGEON.

Held, *that the authority of a servant to pledge the credit of his employer, is restricted to such matters as fall necessarily within the usual course and scope of the employment, and when the station master at a railway station directed a surgeon to attend a passenger who had met with an accident*, held, *that the company was not liable to pay the surgeon's charges.*

A PASSENGER, named Higgins, met with a serious accident, occasioned by the removal of a truck on the defendants' railway; and the station master called in a surgeon, who requiring assistance directed the plaintiff, an eminent hospital surgeon at Birmingham, to amputate one of the patient's legs. The plaintiff performed the operation successfully, and called upon the company to pay him, which they declined, upon the ground that they had not given any one authority to employ the plaintiff, and that they had already compensated Higgins for the injury he had sustained. The case came before the Court upon a rule to enter a nonsuit. The question chiefly discussed and upon which the judgment of the Court turned was, whether the station master had authority to pledge the credit of the company by the employment of a surgeon, when a passenger was accidentally injured.

After taking time for deliberation, the Court decided, that the employment of a surgeon to attend a passenger, was not an authority incidental to the office of a railway superintendent or station master. The employer only gives authority to his servant to bind him in matters falling within the usual scope of the employment, and nothing beyond that could be implied. (Citing *Hawtayne* v. *Bourne*, 7 Mees. & W. 595.) There was no reason why the servant of a railway company should have a more extensive authority than the servant of a copartnership, or of a private individual not conducting his business in person. Upon those grounds the Court held, that the company was not liable, and directed a nonsuit to be entered.

Wesley v. *Bonsor.* Jan. 16, 1849.

EVIDENCE OF OFFICER ADMISIBLE IN ACTION AGAINST SHERIFF.

IN an action on the case against the sheriff of Surrey, for not selling a printing machine for the best price which could be obtained for it, a person named Seal, the officer who conducted the sale on behalf of the sheriff, was called for the defendant, and stated upon his examination on the *voir dire*, that although he had not instructed the attorney to defend the action, he expected to have to pay the costs under his bond to the sheriff. Seal's evidence was admitted on the trial, and a verdict passed for the defendant, and upon a motion for a new trial by Mr. *Humfrey*, on the ground of the improper reception of evidence;

The *Court* held, that under Lord Denman's Act, (6 & 7 Vict. c. 85,) the mere liability to indemnify one of the parties to the action, was not sufficient without something more to render a witness incompetent.

Parke, B., observed, that the case of *Sage* v. *Robinson*, (*ante*, p. 109,) in which the same point arose, had been fully considered by the Court, and was not distinguishable in principle from the present case. Rule refused.

Jan. 18.—*Wilson* v. *Kent*—Rule to set aside writ of summons for irregularity refused.

— 18.—*Harvey* v. *Dakin, clerk*—Rule *nisi* for discharge of defendant out of custody.

— 19.—*Purvis and others* v. *Traill*—Judgment for the defendant.

— 19.—*Bamford and others* v. *Isles*—Judgment for the defendant.

— 19.—*In re the Arbitration between the Wilts, Somerset and Weymouth Railway Company and C. F. Foulkes*—Rule to show cause peremptorily enlarged till next Term.

— 20.—*Burnside* v. *Dayrell*—Rule *nisi* for new trial discharged.

— 22.—*Tasker, clerk,* v. *Bullman*—Judgment for plaintiff.

— 23.—*Pratt* v. *Fletcher*—Rule absolute for new trial.

— 23.—*Maggioni* v. *Delafield*—Rule *nisi* for setting aside verdict on the ground of misdirection.

— 23.—*Dobbs* v. *Penn*—Part heard.

— 24.—*Attorney-General* v. *Walker*—Rule absolute for new trial.

— 24.—*Forrest and others* v. *Whiteway*—Certificate in favour of the plaintiffs.

NISI PRIUS.

Jan. 18.—*Westall* v. *Brain*—Verdict for the defendant, on the ground that the money paid into Court would fully compensate for the damage sustained.

— 18.—*Cowper and another* v. *Jones*—Verdict for defendant—Leave given to move on certain points raised.

— 19, 22.—*Hart* v. *Livesay*—Juror withdrawn.

— 22.—*Brooke* v. *Rawl*—Verdict for the plaintiff.

— 23.—*Roy* v. *Upton*—Verdict for plaintiff, with leave to move to enter verdict for defendant.

— 23.—*Warden* v. *Bunsen and another*—Part heard.

— 24.—*Dalton* v. *Bush*—Verdict for the plaintiff.

Exchequer Chamber.

Jan. 20.—*R.* v. *Sarah Waters*—*Cur. ad. vult.*

— 20.—*R.* v. *H. Allen*—Conviction affirmed.

— 20.—*R.* v. *R. Week*—Conviction affirmed.

— 20.—*Reg.* v. *Holloway*—Conviction reversed.

— 20.—*R.* v. *J. Hall*—Conviction affirmed.

— 20.—*Reg.* v. *Wynn*—Conviction affirmed.

— 20.—*Reg.* v. *Reed and others*—Conviction reversed.

BUSINESS OF THE COURTS.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER MICHAELMAS TERM, 1848.

Middlesex.

Queen's Bench.

R. Sydney	Cahill	S. J.	Macdonald (stayed)	Dt. Bolton
Johnson, Son, and W.	Rowe		Cope (stayed)	Prom. Chester
S. B. Hamer	Davies	S. J.	Wilkinson (stayed)	Prom. Howard
M. Fraser	Williams	S. J.	Whiteway (inj.)	Prom. Mardon and P.
Adlington and Co.	Bastone		Ross (inj.)	Dt. Chadwick
Elderton and H.	Fiddes	S. J.	Wm. Toogood (inj.)	Prom. Campbell and A.
Johnson, Son, and W.	Crowther, admix., &c. (inj.)		Edwards and another, surviving executors	Dt. Williamson
Becke	Becke		Parish and another	Dt. Helme
Jno. Lewis	Moon (stayed)		Connop	Pro. Lewis
Thomas M. Parker	Clerk (inj.)	S. J.	Hughes	Pro. Burrell
Ablett	Neal		Ward (inj.)	Pro. Carlon and H.
Oliverson and Co.	Doe d. Peacock	S. J.	Frere	Eject. Vizard and Co.
Everest and Co.	Clutterbuck		Carter (inj.)	Pro. Bell
Wontner	The Queen		Johnson and others	Indt. E. Lewis
Wm. Day	Dawson	S. J.	Macken	Pro. Wright and Co.
J. Strutt	Parratt	S. J.	Elrington	Pro. Oldershaw
Ivimey	Dowling	S. J.	Becke	Pro. Blake and Co.
Walker and Co.	Doe d. Conant & ors.	S. J.	Warner	Ejt. Robinson
E. J. H. and J. Lawford	The Queen	S. J.	Kendall and four others	Ind. Kendall, In person; Binckes, G. Beckley; Lunley, Lewis; Bickley, In person; Moore, Bower & Son
Kennedy	Martyr	S. J.	Isaacson	Ca. Jones and Co.
Lawford	The Queen	S. J.	Kendall and others	Indt. Bower & Son
Jos. Row	The Queen	S. J.	Turner	Indt. Hine and P.
Kingdon and S.	Carpenter		Bowen	Dt. Young and Son
Walker, G. and Co.	Doe dem. Conant and others	S. J.	Kloss	Ejt. Englebeart
Coode and Co.	Walsh and another	S. J.	Morrison	Pro. Beavan and G.
Same	Thompson	S. J.	Morrison	Pro. Same
Hodgson and B.	Whitfield and anor.	S. J.	Beale	Dt. Appleby
T. F. Miller	Tucker, admix.	S. J.	Chaplin and another	Ca. Morphett
O. Richards	Edwards	S. J.	Leahy	Pro. Beavan and G.
Wyche	Flocton and others	S. J.	Melladew and others	Ca. G. Fry
Sutcliffe	Foster	S. J.	Lord Loftus	Covt. Lethbridge and M.
Same	Swindall	S. J.	Dawson	Covt. Lewin
Same	Foster	S. J.	Dawson	Covt. Lewin
Same	Swindall	S. J.	Lord Loftus	Covt. Lethbridge
Thom. Binns	Foulkes		Wilder	Pro. Aldershaw and M.
Nixon	Ghislin		Gregory and another	Tres. Hodgson and B.
Currie, W. and W.	The Queen	S. J.	The Marquis of Chandos	Indt. Espin
C. Fiddey	Jeffs and wife	S. J.	The Midland Railway Co.	Ca. Parker and Co.
Lauder	Brown	S. J.	Lord Albert Conyngham	Pro. Palmer and F.
Rowlatt	Goodman	S. J.	Pocock	Pro. H. H. Pool
Wing and Du Cane	The Dublin and Belfast Junction Railway Company	S. J.	Cheveley	Dt. Greenwood
Same	Same	S. J.	Same	Dt. Same
Hodgson and B.	Gregory and ux. admix., &c.		Fitzgerald	Dt. Roscoe
Vallance and V.	Hooper	S. J.	Johnson and others	Dt. In person
Columbine in person	Colombine	S. J.	Penhall and another	Pro. Sandys
Wright	The Queen	S. J.	Powell	Ejt. Hughes
Dawes	The Queen	S. J.	Fontainemoreau	Indt. Hobler
Cookney	Thomson	S. J.	Amsinck	Dt. Johnstone, F. and L.
Same	Horner	S. J.	Same	Dt. Same
R. C. Barton	Doe dem. Burgess and another		Webb	Ejt. J. C. Grant
G. J. Shaw	Archer	S. J.	Frances	Ca. Clarke, F., and F.
White, B. and Co.	Tylee	S. J.	Mayne	Tres. Capes and S.
R. K. Lane	Chapman		Speller	Pro. Boulton
Allen and M.	Doe dem. Parker and ors.	S. J.	Constable	Thos. Kirk

Kearns	Wood	S. J.	Elliotson	Pro. Smith and Son
Kinder	Ryan		Clark and another	Tres. Smedley and R.—Canham in person
Delamere	Satterthwaite		Hateley	Ca. Hammond
Humphrys	The Queen	S. J.	Walker and another	Indt. Watson, B., & Son
	The Queen		Campbell	Indt. In person
Yallop	Kymer	S. J.	De Winton and others	Ca. Jno. Williams
Warneford	The Duke of Brunswick and Luneburgh	S. J.	Harmer	Ca. A. R. Steele
G. Stephens	Doe dem Sweatman and others		Scott	Ejt. Bassett
Willis	Allanby and others	S. J.	Tomkins	Ca. J. and W. Vallance
Elderton	Cameron, Coalbrook Steam, Coal, and Swansea and Loughor Railway Co.		M'Adam	Dt. Rowland and Co.
Lee	Flanagan		Mead	Tres. Vaughan
J. Abbott	King	S. J.	Bunn	Pro. Evans
R. Richards	Penfold	S. J.	Lord, clk.	Tress. Pontifex and M.
Gregory, F., and Co.	Bennett	S. J.	Gibson	Ca. L. Hicks
Hope	Hoare (pauper)	S. J.	Coupland	Ca. Walker
Watkins and H.	Scargill		Becke and another	Trov. Person
H. Ashley	Snook		Dorman and another	Tress. S. M. Cooper
Feron and C.	Sopwith and others	S. J.	Howell	Pro. Lawrence and Co.
F. Asprey	Eliza Hester		Mansfield	Tres. Alger
Same	Ellen Hester		Same	Tres. Same
J. S. Arnold	Arnold	S. J.	Bowes	Dt. Weston and Son
Van Sandau	Newnham		Farmer	Repln. Burgoynes & Co.
Person	Lane		Clarke	Pro. Hensman
Begbie	Chambers		Slater	Pro. Lyde
Bower and Son	Taylor		Newington, jun.	Pro. Palmer, F. and P.
Lacy, B.	Bass and others		Wells	Pro. J. Lewis
Lewis, John	Lewis		Ramsey	Pro. Hayes
Newton	Crossley		Lovibond	Ca. Wolston
Same	Foster		Bishop	Dt. E. Lewis
Clarke, F. and F.	Parker	S. J.	Stokes	F. Iss. F. W. Pike
Meggison and Co.	Ogden, (P. O.)		Bell	Pro. Clayton and Co.
Steadman	Bell (pauper)		Port of London Assurance Company	Dt. Chapple
Abbott and Co.	Sutton and others		West	Dt. Child and K.
Same	Cock		Innes	Dt. In person
H. Hart	Jane Hart, (a pauper)		Oliver	Pro. Burn
Towsey	Saul and another		Nathan	Dt. Turner
Keene	Keene		Hammond	Ca. Haines and Co.
J. A. Jones	Benjamin		Stanley	Pro. Person
J. Strutt	Gaskill		Skene	Pro. Spinks
Willoughby	Holliday		Haddon	Spencer
William Lane	Lane and others	S. J.	Hooper and another	Ca. Kilgour and P.
Gregory, F. and Co.	Houghton	S. J.	Mousley	Pro. J. S. Gregory
Dickson and O.	Ellis, (an Infant)		Waugh	Tres. S. Fisher
Hoskins	Ruck		Whelan	Tres. M. Lewis
Hodgson and B.	Parratt and another		Attwood	Dt. Holme and Co.
Kinder	Doe dem. Stephens		Perkins	Ejt. In person
J. Wheelock	Margetson		Wright	Ca. Sturmy and S.
Nethersole	M'Cormack		Parker and another, exors.	Pro. Robinson
Walker, G. and Co.	Doe dem. Conant	S. J.	Hurst and others	Ejt. Wire and Child
O. Richards	Brewer		Penny	Dt. Raines
Frankham and D.	Phipps and another		Jackson	Pro. Chilton and Co.
Clapham and B.	Combes		Cupit	Pro. E. Lewis
Macnamara	Slater		Batchelor	Pro. Margary
Perkins	Doe dem. Wade and anr.		Templar	Ejt. In person
Adams	Laurence		Pfeil	Tres. Ford
Smedley and R.	Slater and wife		Allen	Pro. Shuttleworth
Hooker	Gabriel and another, &c.		Stevens	Covt. Reece
Rawlings	Bankin	S. J.	Hamilton	Pro. Hardwick and D.
Meggison and Co.	Hall		Ridler	Dt. Sudlow and C.
J. Todd	Doe dem. Kelly		Woods	Ejt. H. and O. Webb
W. H. Turner and Son	Rees		Hayward	Pro. Henderson
W. H. Smith	Greatley		Henry	Dt. Strick
Warneford	Duke of Brunswick and Luneburg	S. J.	James	Ca. H. W. Vallance
Keene	Keene		Cother	Pro. In person
Same	Todd		Gell, jun.	Pro. Jones
Same	Knowles	S. J.	Halse	Tres. Campbell and W.
Same	Keene		Ward	Dt. Parsons
Champion and Co.	Alexander		Jones	Dt. J. Ward

Abbott and W.	Morris		Pinnock and another	Berkeley for Pinnock
Code and Co.	The Queen	S. J.	Sievier	Sci. fa. Wight
Fladgate and Co.	Doe dem. Jones	S. J.	Ashwells & another, exors.	Ejt. King and A.
Dolman and S.	Woodin		Davies	Pro. Becke
H. Walker	The Dean and Chapter of Christ Church, Oxford, &c.		Hicks	Dt. C. Blake
Pocock and P.	Bates		Bramwell	Dt. Paterson
Crafter	Doe dem. Howe		Thornton and another	Ejt. Harris and W.
Lewis and L.	England		Zabell	Ca. Henderson
Same	Bodger		Pegg	Pro. May
Walsh	Doe dem. Morrison & anr.		Glover	Ejt. Rushbury
Dyte	Reed		Dawkins	Pro. Simpson
Same	Joel		Same	Pro. Same
J. Bird	Doe d. Glascott		Earl	Ejt. Angell
Same	Rhodes		Hodding	Dt. Date
John Pike	Landon and another		Power	Dt. Clayton and Co.
Davies and D.	Robins		Tripp	Tres. Pepper
Chamberlayne	Doe d. Poole		Hilles and others	Ejt. De La Mare
Lambert	The Derbyshire, Staffordshire and Worcestershire Junction Railway		The Rev. Eldrid Woodland	Dt. Paterson
Ward	Jones		Alexander and others	Tres. Champion
Hart	Trenaman		Lavers	Dt. Harris
Chilton and Co.	Doe sev. dem. Wainewright and others	S. J.	The Great Northern Railway Company	T. and E. Baxter and Co.
E. Lewis	Peyronnet		Day	F. Iss. Vallance and V.
J. and H. Godden	Clay		Jarmain	Ca. Willoughby
Dignam	Collins, extrix., &c.		Crouch, surviving exor., &c.	Ravenscroft
In person	Crafts		Hartopp, clk.	Pro. Parke and Co.
H. T. Roberts	Sharpus		Dent	Tro. Rickards and W.
Riley (in person)	The Queen		Hart, indicted with ors.	Indt. Walter for Hart
W. Williams	Glover		Beale	Dt. Appleby
S. S. Sydney	Nathan		Story, sued, &c., with ors.	Tres. Blake
Wetherfield	Lawrance		Bradbury	Begbie
Makinson and S.	Gill and another		Swinton	Pro. Peddell
Chappell	Doe d. Deabble and ors.		Elliott and another	Sidney and S.
Whalley	Nind		Willis	Prom. Hare
W. H. W. Cross	The Queen		Tozer, indicted with ors.	Indt. G. Fry for Tozer
Denton	Denton		Polhill	Pro. Elkins
H. J. Levy	Donovan, extrix., &c.		Webb	Dt. Wakeling
Nichols	Damb		Tucker	Pro. Eyre
Smith	Gore		Watmough	Dt. J. L. Dale
Hembery	Darnell		Martin and wife	Prom. Hammond

Common Pleas.

REMANETS FROM MICHAELMAS TERM.

Melton	Fearn	S. J.	Countess Waldegrave	Prom. Pearson
Ivimey	Hoare	S. J.	Lee	Tres. Jennings
Edwards and R.	West Cornwall Railway Company, Inj.	S. J.	Enthoren	Dt. Crowder and Co.
Marten and Co.	Doe d. Mills and ors.	S. J.	Samuda and another	Eject. Tucker and S.
Same	Same	S. J.	Same	Eject. Same [& Co.
Same	Same	S. J.	Pratt and others	Eject. {Symes, Weston, Tucker and S.
Same	Same	S. J.	Samuda and others	Eject. {Tucker and S. L. Rattan
Same	Same	S. J.	Samuda and another	Eject. Tucker and S.
Same	Same	S. J.	Same	Eject. Same
Same	Same	S. J.	Same	Eject. Same
Same	Same	S. J.	Same	Eject. Same
Same	Same	S. J.	Same	Eject. Same
Davies, Son, and C.	Walker	S. J.	Ford	Ca. G. S. Ford
Adamson	Adamson	S. J.	Long	Tres. Hume and B.
W. J. Holt	Barker		Munro	Prom. Vallance and Co.
H. and O. Webb	Goddard	S. J.	Dobson and another	Dt. Parker and Co.
Davies, Son and C.	Parker and another	S. J.	Parsey	Cov. A. Haynes
Clarke, Gray and Co.	Broomhead	S. J.	Tyrrell	Ca. Gregory, F. and Co

H. Walker	Parker	S. J. Great Western Rail. Co.	Prom. Maples and Co.
Rae and Brown	Macgregor	Bainbrigge	Iss. J. G. Lander
J. Goren	Johnson	Winthorp, sued, &c.	Trea. H. E. Brown

Court of Exchequer.

Lofty and Co.	Wakley	S. J.	Cooke	Ca.	Catlin
Wright and K.	Watts	S. J.	Clarkson	Pro.	Pontifex and M.
Spencer	Beauclerk	S. J.	Copeland	Pro.	Brundrett and Co.
Bell and Co.	Burdis, (P. O.)	S. J.	Stamp		
Chisholme and Co.	Vauxhall Bridge Company	S. J.	Taylor and others	Pro.	G. Henderson
Wade and P.	Troup	S. J.	Clayton	Covt.	Phillips and Son
Milne and Co.	Steiner	S. J.	Heald and others	Covt.	Clayton and Co.
Gregory, F., and Co.	Scarisbrick and ors.	S. J.	Kennard and another	Case,	Hill and Heald
W. Moss	Ryalls		Sanderson, admix., &c.	Tro.	Kilgour and P.
Edwards and P.	Moffatt and another		Beaumont	Covt.	A. Duncan
T. Martin	Broom	S. J.	Eastern Counties Railway and another	Pro.	Clark and Co.
S. Smith	Ford		Elliot and others	Tres.	Duncan
Hodgson	Seaver		Bird and another, sued &c.	Trov.	C. Brown
Bell, R., and Co.	Holmes	S. J.	Ralli	Ca.	Kempster
Futvoye and S.	Broadwood and others		Ashton	Pro.	Crowder and M.
S. Hamilton	Bennett		Martin	Ca.	Devonshire and W.
J. and H. Cole	Williams and another		Davies	Trov.	Humphreys
White and Co.	Doe d. Dean and Chapter of Westminster	S. J.	Campbell, clk., and ors.	Pro.	Few and Co.
A. Mayhew	Goodchap		Webb	Ejt.	Pitman
Same	Harvey		Tingey	Pro.	Gant
J. G. Lander	Walker		Collick and another	Trov.	Harrison and D.
Rickards and W.	Evershed		Langridge and another	Pro.	Bright and Lane
Same	Lyons		Paine	Covt.	Wilson
Westmacott and Co.	Long	S. J.	M'Cleane	Pro.	James
Cornthwaite	Cornthwaite		Smith	Pro.	Benbow
Ranyard	Haddan		M'Carthy	Dt.	Keightley and Co.
Gregory and Co.	Houghton	S. J.	Guest, Bart., M. P.	Dt.	Keane
Tilson and Co.	Bussey		Ellerton	Pro.	Burcham and Co.
Norcott	Norman		Thompson	Pro.	T. H. Dixon
E. Lewis	Stahl		Parker, Esq.	Pro.	W. and H. P. Sharp
W. & G. T. Woodroeffe	Dormor		Howard	Ca.	Gem and Co.
Wiglesworth	Wild		Davison	Pro.	Davis and Co.
Crosby and C.	Preston and another		Gray	Pro.	Rushworth
Braham	Randall		Rogers	Dt.	Brooksbank
Keighley and Co.	Norton, admix., &c.		Beckley	Ca.	Draper
H. Weeks	Bond	S. J.	Radcliff	Dt.	Blower and Co.
C. W. Wilson	Whitaker		Head	Pro.	Westmacott and Co.
Holme and Co.	Nottidge	S. J.	Ripley and another	Pro.	J. R. Hudson
Same	Same		Ripley	Tres.	Crowder and M.
R. D. Neale	Doe d. Clark and ux.		Stacy	Pro.	Same
Gregory and Co.	Conroy, Bart.		Castle	Tres.	Eject. W. H. Garry
E. Lewis	Bishop		Smith	Pro.	Binns
Rickards and W.	Rickards and another		Jones	Trov.	Sandys
C. Barnard.	Davey (pauper)		Budden	Pro.	Braham
Carrett and C.	White		Bruce	Ca.	Watson
J. Clapperton	Pugh		Lane	Pro.	Parsons
C. V. Lewis	Croft	S. J.	Fearon	Pro.	Phillips
Parker and Co.	Miller		Wood and another	Dt.	Fyson and Co.
Same	Lyon and others		Powers	Pro.	Holme and Co.
J. Humphreys	Reading		Cubitt and another	Covt.	Linklater
F. Sanford	Carrington		Best	Ca.	Burchell and H.
J. P. Davis	Arber	S. J.	Lewis	Dt.	J. P. Davis
Bickley	Gibson		Blunt	Pro.	Gregory and Co.
Wellborne	Roots		Shaw	Tres.	Lakes
Bisgood	Greenland		Chaplin	Pro.	Saward
Atkinson and Co.	Dawson and another		Rt. Hon. G. R. Dawson	Ca.	Cattarns
E. Lewis	Bishop		Foster	Dt.	Husband and H.
E. Towsey	Ronconi		Beale	Tro.	Newton
Dimmock and B.	Goding		Cole	Pro.	Appleby
Rickards and W.	Morton		Wilson and another	Dt.	Underwood
Same	Clough and another		Wilson	Pro.	Holme and Co.
Smith	Taylor		Raneford	Dt.	Van Sandau and Co.
				Dt.	Smith

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 3, 1849.

"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
Horace.

CONCLUSION OF THE TERM.

COMMENCEMENT OF THE SESSION OF PARLIAMENT.

Hilary Term has concluded since our last publication, and those assemblies in which the practical business of legislation is conducted have commenced their Session. Neither of these events can be deemed uninteresting to the members of that profession to which the Legal Observer peculiarly addresses itself.

The changes introduced by modern acts of parliament, or adopted by the Courts, with the laudable intention of facilitating the dispatch of judicial business, have tended to render the distinction between Term time, and what used to be called "Vacation," little more than nominal. With the exception of a few days at Easter and Christmas, and the interval between the 12th August and the 24th of October, there is, in fact, no Vacation. Although the duration of the Terms is fixed by act of parliament, the business formerly confined to these periods is now distributed pretty equally over ten months of the twelve that make up the year. Not only are writs issued and served, pleadings delivered and filed, and all the machinery of litigation proceeded with, out of Term, but the Courts of Law and Equity sit after, as well as in Term, for the determination of questions of the same nature and importance which occupy their attention in Term time. Although Hilary Term is at an end, all the Courts sit in Banco next week. In fact, the only practical distinction between Term and the period which immediately succeeds to it is, that the Common Law Courts, in the Sittings after Term, confine themselves to cases set down for hearing in Term, and do not entertain fresh applications. The after Sittings are occupied in disposing of arrears, and the character and extent of the new business can only be ascertained by what occurs during the Term. Judging by this test, the amount of new business brought before the Courts of Law and Equity, during the Term which closed on Wednesday, has been, we understand, considerably below the usual average.

As the Term proceeded, we endeavoured to put our readers in possession—soon after it was pronounced—of every decision of sufficient importance to justify either a brief note or a formal report, in pursuance of a plan which, we have reason to believe, has met with so much approval as to encourage us to enter into arrangements to render it more perfect and complete, so that our readers will soon have an opportunity of conclusively estimating the value of the alterations—let us hope improvements—introduced in that portion of the publication devoted to reports of the recent decisions of the Courts.

In reviewing the cases decided during the bygone Term, although many recur to our recollection, with which every professional man is bound to make himself acquainted,

perhaps there was no case calculated to excite public attention, or to create any unusual interest, even within the pale of the profession, if we except the case of *His Royal Highness Prince Albert* v. *Strange*, in which an unsuccessful attempt was made to dissolve an exparte injunction, granted to restrain the publication of a descriptive Catalogue of Etchings, executed by the Prince Consort and her Majesty for their own amusement, and of which the defendant obtained impressions, without the license or authority of the Royal artists. The case was discussed, in the first instance, before Vice-Chancellor Knight Bruce, and subsequently, upon appeal, before the Lord Chancellor, with great professional ability and learning. The judgment of Vice-Chancellor Knight Bruce has so nearly exhausted the question under consideration, that little remains for Lord Cottenham, beyond expressing his concurrence in, or dissent from, the decision previously come to; but the spirit and temper in which the subject was treated, and the rights of the litigant parties expounded and adjudicated upon, may be proudly referred to as a gratifying illustration of the manner, as well as the principles, upon which justice is now administered in the highest Courts in this kingdom. The Lord Chancellor has intimated his intention of pronouncing his judicial opinion in this case on Thursday next.

The topic united, as matter of convenience, with the departed Term, in the lines which preface these remarks—namely, the approaching Session of parliament—is one which can scarcely fail to be regarded by the members of the legal profession, even more than by the public at large, with mingled anxiety and hope. The course of legislation for several years past, we regret to say, has been neither favourable nor just towards that body whose interests are peculiarly identified with this publication. Their representations have not always met with the attention to which they were entitled—their importance has been overlooked, and their influence undervalued. The total disregard and indifference to the interests of those engaged in the practice of the law, exhibited by men of all parties when in power, is mainly owing, we doubt not, to the extreme repugnance felt by the members of this profession to agitate, or even to unite for any purpose, however reasonable or honourable, which could by possibility be supposed to benefit themselves, or to advance mere professional interests. The feelings which influenced us in abstaining from urgent petition or clamorous remonstrance have not always been appreciated; on the contrary, they have been obviously misunderstood. In these days too much must not be left to an innate sense of justice. If men mean to be listened to, they must speak out. This homely truth begins to be felt by a large proportion of the members of the legal profession, and it will be acted upon, but we hope and trust judiciously and temperately acted upon.

The revision of taxation, and the whole subject of economical reform, promises to be the leading topic of the approaching Session. Upon this subject the attorneys and solicitors have a paramount claim to attention, for in the annual *certificate duty* they labour under a grievous and unjust imposition, which is rendered more intolerable because it is peculiar and exclusive. No becoming means, we are confident, will be neglected to satisfy the government and the two houses of parliament, that the present Session should not be allowed to expire without relieving the most numerous branch of the profession from this objectionable and unjust impost.

Besides the Certificate Tax, which affects the profession peculiarly and exclusively, there are many other subjects in which professional interests, no less than those of the public, are deeply involved, and which, it is anticipated, will be brought under the consideration of parliament at an early period. Of those which are considered most pressing and urgent, we may enumerate the consolidation and amendment of the Bankruptcy Laws,—the jurisdiction and mode of procedure in the Court of Chancery,—the Charitable Trusts Bill,—and certain alterations and amendments in the jurisdiction, practice, and machinery of the County Courts. These and some other subjects of scarcely less pressing importance, will be more conveniently discussed hereafter.

We shall at present only add, that an early explanatory notice and commentary upon every bill introduced in either house of parliament, relating to the administration of the law, is comprehended in the plan recently adopted, with a view to rendering the *Legal Observer* still more deserving of the continued support of the legal profession.

DELAYS IN CHANCERY.

MR. PURTON COOPER'S SUGGESTIONS.

A PAMPHLET has been recently published by Mr. Purton Cooper, on the delays in the Master's Offices in Chancery,[a] containing proposed regulations, 81 in number, of which the following is an outline :—

1. Prescribing the duties and obligations of the Master, for the purpose of expediting the progress of the business before him.

2. Arranging the disposal of short matters.

3. Providing for matters of a pressing nature.

4. Providing a daily paper of causes and matters.

5. In taking accounts, official accountants to be employed.

6. Questions of title to be referred to conveyancing counsel attached to the Master's Offices,

7. As to evidence, arranging the time for bringing in affidavits, and examining witnesses.

8. Regulating the hearing of objections.

9. Regulating the attendance of counsel.

10. Regulating the arguments before the Master, and the right of reply.

11. The Master to be at liberty to direct inquiries and questions to be prosecuted separately, and discussed and determined at separate hearings.

12. The Master's decision to be embodied in an order.

13. Occasion on which the Master shall proceed exparte.

14. In cases of delay in the prosecution of decrees and orders, official solicitors to be employed.

15. The official accountants, official conveyancing counsel, and official solicitors, to be paid by salary, and not by fees.

16. In certain causes and matters, the Master may state a case for the opinion of the Court for his guidance.

We shall have occasion to advert hereafter to several of these propositions in detail; and for the present extract the following summary of proposed remedies in the *three main objects of Chancery suits and proceedings* :—1st, The construction of wills, marriage settlements, and other written instruments.

"1. In all cases in which the only question is the construction of a written instrument, any party interested shall be at liberty to serve a statement of his own claim thereunder upon all other parties having, or supposing to have, an interest, and the Court shall have power, upon the appearance of all parties, or upon due proof of service of such statement of claim upon them, to make a declaration of the rights of all parties under such instrument.

"2. Such declaration may extend to cases of that kind which are embraced by the Scotch declaratory actions.

"A large proportion of short causes involve the construction of some written instruments merely. No fact is in dispute. The meaning of a few lines—of a few words, is the only embarrassment. Nothing more is wanted by the parties for their guidance—to enable them to alien, encumber, settle, devise—than a declaration of the Court. What is there apart from old prejudice, which we are fast getting rid of, to prevent this from being obtained without the cumbrous and expensive machinery of bill and answer?"

2nd, The appointment of guardians, and the allowance of maintenance to infants.

"1. Any one, upon an affidavit stating the requisite facts, shall be at liberty to apply to the Master to appoint guardians to infants, and to make an allowance for their maintenance.

"2. In cases in which there is no dissatisfaction with the decision of the Master, his certificate stating the names of the guardians and the amount allowed for maintenance shall be sufficient.

"The petition for a reference is a useless expense, and the petition for the confirmation of the Master's report, where there is no dissatisfaction, is equally a useless expense.

"3. In cases where the parties are dissatisfied with the decision of the Master, he shall make his report of the proceedings before him in the usual way, to give opportunity of an appeal to the Court.

"4. In cases belonging to this class the Master shall be at liberty to dispense with strictly legal evidence of facts respecting which there is no dispute, when such strictly legal evidence cannot be obtained without delay or expense.

"The writer has known proceedings in cases of this kind suspended for twelve months, the Master requiring the best evidence of the identity and ages of the infants, which could only be procured from the East Indies. The Court cannot be too difficult as to the evidence received where a fund is to be distributed. But in questions of guardian and maintenance, may it not, without incurring an imputation of rashness, be thought—no one suggesting any doubt—that evidence of a degree less high may safely be admitted, when none better can be had without additional delay or expense?"

3rd, The administration of the estates of testators and intestates.

"1. Creditors, legatees, annuitants, widows, and next of kin, shall be at liberty, without bill

[a] The Delay in the Office of the Masters in Chancery, and the Remedy. By Charles Purton Cooper, Esq., Q. C. Stevens & Norton.

or petition, by summons before one of the Masters, upon affidavit of their claims, to call upon personal representatives to pay or secure the same.

"2. Assets being admitted, the Master shall have powers, in reference to ordering payment, &c., analogous to those of the Judges of the Small Debts and Demands Courts.

"3. Assets not being admitted, the Master shall have power to appoint a receiver, to direct a sale of all or any part of the assets (the proceeds being paid into Court to the credit of the matter), to advertise for creditors, legatees, next of kin, and to distribute the fund. (See the Joint-Stock Companies' Winding-up Act).

"4. The Master's Order of distribution shall bind all parties interested, in like manner as if such distribution were made by decree or order in a suit.

"5. The Master, at the request of parties dissatisfied with his decision, shall grant a certificate of such decision, with the evidence and grounds upon which he has proceeded; and such parties shall be at liberty to apply to the Court upon the footing of such certificate, and without objections or exceptions, to reverse or alter the Master's decision."

The ensuing regulations Mr. Cooper suggests may be applied to matters of litigation not falling under any particular head:—

"1. Where an equitable question depends upon facts, respecting which there is no dispute between the parties, they shall be at liberty, without bill or answer, or petition, or affidavit, but upon a case stated and signed by them or their solicitors, to obtain the decision of the Master of the Rolls, or one of the Vice-Chancellors, upon such question.

"2. Such decision shall bind the right, unless reversed upon appeal to the Lord Chancellor or House of Lords.

"3. Where an equitable decision depends upon facts, respecting which all the parties interested are not agreed, it shall be lawful for any of the parties to apply to the Master of the Rolls, or one of the Vice-Chancellors, by motion in a summary way, without bill or answer, or petition, but upon an affidavit stating the facts respecting which the parties are agreed, and the facts respecting which they are not agreed, when the Master of the Rolls or Vice-Chancellor may, if the case shall appear to be one in which such a course can be adopted without probable inconvenience, refer it to the Master to ascertain and find the disputed facts.

"4. Notice of such motion to be served on all parties interested. If any party interested neglect to appear, the Court, upon proof of such service, shall have power to make the order in the absence of such party.

"Regulations will be requisite with regard to the proceedings before the Master upon such reference.

"Regulations will also be requisite providing for an appeal to the Court, if any of the parties shall be dissatisfied with the Master's finding of the facts.

"It will, besides, be necessary to have regulations providing for a statement of the case, after the facts found and ascertained.

"5. The facts respecting which the parties were not agreed having been ascertained and found, the decision of the Master of the Rolls or Vice-Chancellor, upon the equitable question depending, may then be obtained.

"6. Such decision shall in like manner bind the right, unless reversed upon appeal to the Lord Chancellor or House of Lords."

PREPARATION OF BANKRUPTS' SCHEDULES.

It has often been remarked upon as a great hardship and injustice, that bankrupts should be required to have their schedules prepared at their own expense, and not at the expense of the bankrupt's estate, when the theory of the law is, that the bankrupt gives up to the Messenger of the Court, immediately after his bankruptcy, all the money and other property of which he is possessed. It is also tolerably notorious that a class of persons, calling themselves accountants, frequent the Courts of Bankruptcy, get possession of the papers and vouchers of bankrupts, upon pretence of framing their balance-sheets, and sometimes extort from the bankrupts or their friends, sums of money very much disproportioned to the value of the services actually performed. Some difficulty arises in suggesting any adequate remedy for these evils, inasmuch as the bankrupt is called upon in every case to swear to the truth of the statements contained in his balance-sheet, and is held by the Court strictly responsible for its accuracy. The subject was very much discussed before the Select Committee of the House of Lords, to which the Bill for the Consolidation and Amendment of the Bankruptcy Laws was referred during the last Session of Parliament, and we find by the report of the Committee, (printed *ante*, p. 82,) that amongst the numerous witnesses examined,[b] there was a considerable concurrence of opinion in favour of the proposition, "that the balance-sheet should be made out in the official assignee's office, and that he should have a reasonable remuneration for this increased work and labour."

Mr. Commissioner Fane, whose untiring ardour and perseverance in the cause of

[b] The names of all the witnesses examined before this Committee, will be found, *ante*, p. 81.

bankruptcy reform we have before had occasion to notice in terms of commendation, has taken the first step in this matter, and, by way of experiment, has caused his messenger to address a letter to every person made bankrupt in his Court, a copy of which we subjoin:—

"Sir,—I am directed by Mr. Commissioner Fane to give the following information:—

"The Commissioner has directed the official assignees, attached to his Court, to make out for the information of the Court, in every case of bankruptcy, from the books, papers, writings, and *statements* of the bankrupt, accounts, according to the form, now used by bankrupts, under the sanction of the Court, for the purpose of passing their last examination. You will be at liberty, if you think proper, to adopt the accounts so prepared, and will be allowed to pass your last examination upon them, upon declaring them to be true to the best of your belief.

"If you adopt the accounts so prepared, you will avoid the expense, usually incurred by bankrupts in preparing their accounts. If you prefer preparing your own accounts with the assistance of your own accountant, you are at liberty to do so, but it must be *at your own expense*. Whether you prepare your own accounts, or adopt those prepared by the official assignee, the Commissioner will require you to be in constant attendance at the official assignee's office from the earliest possible period after your bankruptcy is declared, until you shall have given the official assignee all such assistance and information as he may require to enable him to perform the duty imposed upon him by the Court; and if you do not constantly attend the official assignee until your attendance is no longer required by him, the Commissioner will adjourn your last examination, *sine die*, and *without protection*.

"I am, Sir, &c."

The small fry of accountants, and others who are in some degree dependent upon their patronage, find great fault with Commissioner Fane's circular. It appears to us not to be fairly open to any of the objections made to it. The option is given to the bankrupt to have his accounts prepared in the official assignee's office without expense, or to prepare his accounts with the assistance of his accountant, at his own expense. If the official assignee is satisfied with an arrangement which must necessarily increase his labour and responsibility, we do not know that any one else has a right to complain. At all events, the experiment is well deserving of a trial. The respectable class of accountants, who are numerous, as well as those members of the profession who resort to no underhand influences in obtaining clients or business, we are satisfied are not likely to sustain any serious injury by the proposed alteration.

WOLVERHAMPTON LAW ASSOCIATION.

At the Annual General Meeting of the Members, held at the Swan Hotel, Wolverhampton, on Thursday, January the 11th, 1849, Mr. *Rutter* in the Chair:

The Report of the Committee having been read—it was unanimously resolved,

1st. That the Report of the Committee be received and entered on the minutes.

2ndly. That the first Rule of the Association be altered, by expunging from the third paragraph therein, the words "residing in or near Wolverhampton," so as to enable the Society to admit as Honorary Members, barristers residing elsewhere.

3rdly. That Mr. Best be elected to fill the office of President, and Mr. Manby the office of Vice-President of the Association and Library, until the General meeting of 1850.

4thly. That Mr. Thorne be elected Honorary Secretary and Treasurer of the Association until the General Meeting in 1850.

5thly. That Mr. Rutter, Mr. Crisp, and Mr. C. Corser, be re-elected members of the Committee; and that Mr. Phillips, Mr. Thomas Walker, and Mr. Gough, be elected members in lieu of those who go out of office under Rule 8.

6thly. That the thanks of the Meeting be given to the President, Vice-President, Secretary, and Committee of the past year, for their attention to the interests of the Society.

7thly. That the Report of the Committee, and the Resolutions of this Meeting be printed, and that a copy thereof be sent to each Member of the Society, including the Honorary Members, and to every solicitor residing within the district named in the first rule of this Society; and that a copy be also sent to the Metropolitan and Provincial Law Societies, and to each member of the profession in parliament.

J. S. Rutter, *Chairman.*

8thly. That the thanks of this meeting be given to Mr. Rutter for his able conduct in the chair.

REPORT OF THE COMMITTEE.

The Committee feel pleasure in laying before the Members at the Second Annual General Meeting of the Association, a statement of their proceedings during the past year, and an account of their receipts and expenditure.

The Committee in February last, forwarded to the members of this borough, and for the county, and to some other members, for presentation to the House of Commons, petitions against the Annual Certificate Duty, signed by 116 attorneys; but the motion to the House on the subject was unsuccessful, owing, in a great measure, as the Committee conceive, to the late period of the session at which the subject was brought forward. They, however, believe that the impost of this tax (which is admitted on all hands to be an unjust one, and which has now induced a general protest from the pro-

fession,) will not be of much longer duration, if the exertion for its abolition be continued. The Committee therefore recommend, that the intended motion on this subject, in the next session, shall be supported by renewed petitions from this neighbourhood.

The unsatisfactory state of the law with respect to the proper stamps to be used on the transfer of mortgages, has also occupied the attention of the Committee; and they have had some correspondence thereon with the Metropolitan and Provincial Law Association and the Incorporated Law Society, in the hope that one of these powerful bodies might be induced to cause a remedial and declaratory act to be brought into parliament. It appears that the Council of the Incorporated Law Society had considered the subject, with reference to the revision of other parts of the Stamp Acts, and they communicated with the Solicitor of Stamps and Taxes, as to the intention of government to revise the Stamp Act, and to learn whether the Board of Stamps would have any objection to the act suggested by the Wolverhampton Law Society. The Solicitor of Stamps and Taxes stated, in answer, that he had not received any instructions for revision; and that the Lords of the Treasury had, in consequence of the decision in *Humberstone* v. *Jones*, authorised the Board of Stamps to return the penalty on affixing the additional stamp thereby declared necessary: he thought the government would not consent to any remedial act. The Committee considers that this proposal of remission only partially redresses the evil; and they recommend their successors to continue the discussion of the question, and also to combine with the committees of other law societies in an endeavour to obtain a revision of the Stamp Act; bearing in mind, that its inequalities and injustice have already been admitted by several successive Chancellors of the Exchequer, and that an intimation was lately given to Lord John Russell, that a revision was desirable.

The Committee should observe, that they caused a copy of the statements of facts and correspondence with the Incorporated Law Society, to be forwarded to Mr. G. I. Turner, the member for Coventry; and his sentiments were requested, whether, if the bill suggested were to be brought into parliament, it would be likely to be opposed by the government—the Committee thinking that Mr. Turner, as a member of the legal profession, would give the subject that attention which its importance to the profession and the public demanded. They were not, however, favoured by Mr. Turner with even an acknowledgment of the papers sent to him, although his attention was a second time called to the subject.

It is with regret that the Committee have to notice the death of one of the members of the Society during the past year.

The unprofessional act, by some solicitors in Wolverhampton, of soliciting the clients of a deceased member for their business, having been brought before the notice of the Committee, they investigated the circumstances, and felt called upon to pass the resolution of censure, copies of which have already been sent to the members of this society.

The notice of the Committee having also been called to the Report of the Finance Committee of the Town Council of Wolverhampton, which recommended that if any act of parliament became necessary, in regard to municipal affairs of the borough, a specific remuneration above disbursements should be agreed on with the solicitor by whom it might be obtained; and considering the principle thus proposed of bargaining with the profession as greatly to be deprecated, it being not only at variance with all respectable and recognised practice, but such as must almost necessarily work injustice either to the attorney or his client, the Committee protested against it. The resolutions passed on the subject, when brought before the Council, were supported by the town clerk and two councillors, who are members of this Society; and, it is hoped, that the suggestions of the finance committee will not be acted upon; indeed, the Committee consider, it must necessarily be abandoned, for they believe that the town clerk would not be a party to its adoption.

Since the last Annual Meeting one new member has been admitted, and there is an application for the admission of another member at the next Quarterly Meeting. Four Honorary Members have also been admitted during the past year, from one of whom the Committee have received the handsome donation of ten guineas towards the library.

A fifth application has been received. It is from a barrister resident in London; and the Committee recommended an alteration of the first rule of the Association, which restricts the admission of barristers to those "residing in or near Wolverhampton," by expunging such restrictive words.

From the present satisfactory state of the finances of the Society, the Committee conceive that a short period only need now elapse before the remainder of the reports for completing the library may be obtained.

The Members of the Committee who retire are, Mr. Bolton, Mr. Brown, and Mr. Pinchard.

RESOLUTIONS OF THE COMMITTEE.

At a Meeting of the Committee of the Wolverhampton Law Association, held 19th January, 1849. It was resolved,

That immediately on the opening of Parliament, petitions to the House of Commons for the Repeal of the Annual Certificate Duty be obtained by the Committee from the attorneys practising in Wolverhampton, and the other towns in the county of Stafford, and sent to the county and borough members for presentation.

That the Secretary be requested to inform the Secretaries of the Incorporated Law Society, and the Metropolitan and Provincial Law Association, that petitions are in preparation here, and urging the desirability of promptness of action by those societies on the same subject.

Also drawing the attention of those Societies to the correspondence between them and the Secretary of the Wolverhampton Law Association last year, respecting the State of the Law as to the Stamp Duties on Transfer of Mortgages, and the necessity for bringing the subject before parliament in the next session, as well as the circumstances of the inequality and injustice of the Stamp Act.

FINES ON COPYHOLDS UNDER BUILDING LEASES.

MANOR OF KENNINGTON, PARCEL OF THE DUCHY OF LANCASTER.

THE Council of His Royal Highness the Prince of Wales, have promulgated the subjoined important instructions in relation to Fines under Building Leases, establishing a principle which we hope to see adopted by other lords of manors, in similar cases.

The system adopted in some manors of insisting upon payment of a fine, computed on two years rack-rent of the houses and not on the ground-rent, completely puts a stop to all buildings on copyhold, the fines demanded being an actual confiscation of the property.

"It having been represented to the Council of His Royal Highness the Prince of Wales, that it is of material importance to the copyhold tenants of his royal highness, within the manor of Kennington, that some fixed rule should be established and made known for assigning the lord's fine upon the admission of new tenants, in cases where the property has been improved by the erection of substantial buildings under building leases: the council consider that the provision contained in the 35th section of the 7 & 8 Vict. c. 65, under which the amount of any fine becoming due within a fixed period may be ascertained and settled by previous arrangement with the copyholder, is sufficient as regards future improvements. But in those cases in which the copyhold estates have been heretofore improved by the erection of substantial buildings under any building lease which may be in existence at the time of a fine becoming payable, the council direct, that the steward do ascertain whether the buildings are of a class which would warrant a building lease for a longer term of years than shall have elapsed since the improvements have taken place; and if such shall be the case, and the buildings are in a tenantable state of repair, then that he be authorised to take such portion of the customary fine as would be the present value of such fine, (allowing interest at 4 per cent.), if payable at the expiration of such a term of years, to be computed from the date of the improvements, as would be a proper term for such building lease: Provided, that in cases where building leases are in existence, the annual sum upon which the fine is assessed shall in no case be less than the amount of the ground rent (if any) reserved upon such building leases.

"By order of the Council of His Royal Highness the Prince of Wales.

"J. R. GARDINER, *Secretary.*

"*Somerset House, Feb.* 12, 1848."

A Tabular statement has been given with the foregoing regulation, from which we extract the following examples:—

Where the unexpired building term is 60 years,

	£	*s.*	*d.*
The fine of 100*l.* will be reduced to	9	10	1
Where 55 years to . .	11	11	3
— 50 — . .	14	1	5
— 45 — . .	17	2	4
— 40 — . .	20	16	6
— 35 — . .	25	6	9
— 30 — . .	30	16	7
— 25 — . .	37	10	2
— 20 — . .	45	12	9
— 15 — . .	55	10	6
— 10 — . .	67	11	1
— 5 — . .	82	3	10
— 1 — . .	96	3	0

The Table gives the sum for each year, but the above will sufficiently show the operation of the scale.

MR. W. HENRY BARBER'S CASE.

APPLICATION FOR RE-ADMISSION ON THE ROLL OF ATTORNEYS.[a]

Mr. Serjeant *Wilkins* applied, on the last day of Term, for an order on the Registrar of Attorneys and Solicitors, to certify that William Henry Barber was entitled to his annual certificate. He made the motion on Mr. Barber's affidavit, in which he states, that he was articled to Mr. William Scoones, of Tunbridge; that he served him continuously as articled and stipendiary clerk for 16 years; and when he left him he received from him a certificate both of his fidelity and integrity; that he was admitted as an attorney in Easter Term, 1836; that he continued to take out his certificate yearly, and to practise up to the 9th December, 1843; that upon that day he was apprehended on a charge of forgery, and that he was tried and convicted at the Central Criminal Court in 1844. He then goes on to allege, that on the 14th of November last he received her Majesty's pardon, under the sign manual, as follows:—

"Whereas William Henry Barber was, at a Session of the Central Criminal Court, holden in April 1844, convicted of being accessary before the fact to forgery, and sentenced to be transported for life for the same, but afterwards received our pardon on condition of not returning to our United Kingdom during the re-

[a] We give the Report of this important case in a separate article.

sidue of the said sentence: we, in consideration of some circumstances humbly represented unto us, are graciously pleased to extend our further grace and mercy unto him, and to grant him our free pardon for his said crime. Given at our Court at St. James's, the 3rd day of November, 1848, in the 12th year of our reign. By her Majesty's command, G. GREY."

This is addressed to the justices of the Central Criminal Court. The letter which accompanied that pardon was in the following terms:

"*Whitehall, Nov.* 10, 1848.

"SIR,—I am directed by Secretary Sir George Grey to acknowledge the receipt of the several documents which you have transmitted to him on behalf of Mr. W. H. Barber, who was convicted at the Central Criminal Court, in April, 1844, of being accessary before the fact to forgery, and sentenced to be transported for life. Sir George Grey desires me to inform you that these papers have received his full and anxious consideration, and that he has satisfied himself that there is sufficient ground to justify his advising her Majesty to grant Mr. Barber a free pardon, which is herewith inclosed. But, while he has arrived at this conclusion from a consideration of the documents in his possession, comprising very material circumstances which have transpired since the conviction, Sir George Grey feels bound to add that he sees no reason to doubt that the verdict of the jury was warranted by the facts proved at his trial. And although he now believes Mr. Barber to have been free from any guilty participation in the frauds of which he was made the instrument, he thinks that greater prudence and caution on his part would have exempted him from the suspicion to which his conduct in the transactions in question naturally exposed him.—I am, Sir, your obedient servant,

"G. CORNEWALL LEWIS."

Addressed to "A. Stevenson, Esq., 19, Essex Street, Strand."

Mr. Barber, in his affidavit, denied all guilty knowledge of, or participation in, the crime; that he had no private acquaintance with Mr. Fletcher or his confederates; that, until his apprehension, he never saw, nor had any knowledge of Fletcher's accomplices, except through Fletcher, who introduced them to him at different times in the course of four years, under false names; that he transacted the business out of which the prosecution arose without the slightest suspicion that the claims of the parties introduced by Fletcher were not genuine; that he has never been guilty of any malpractices whatever; nor were, to his knowledge, except in the prosecution aforesaid, any imputations of the kind urged against him: that at his trial in 1844, several barristers, solicitors, merchants and other gentlemen, on their oaths, deposed to his previous good character; and that he is not aware of any circumstance which should deprive him of his right to practise as an attorney.

The learned Serjeant understood that Sir F. Thesiger appeared on behalf of the Incorporated Law Society, not so much to oppose this application, as to show that that society manifests a proper jealousy in regard to the admission of parties to so important a branch of the profession. It was quite clear, from the manner in which Mr. Barber's pardon had been granted to him, that it was the result of long and anxious investigation and inquiry. In the first instance, a conditional pardon was granted to him, and then Sir George Grey stated in his letter that, from a knowledge of very material circumstances which had transpired since the conviction, he had advised her Majesty to grant a free pardon, and he wound up by saying that he did not (nor does Mr. Barber) impugn the verdict. Mr. Barber had never murmured at, or complained of, that verdict. He was too well acquainted with the laws and with the administration of the law in Courts of Justice, not to be assured that the jury gave to his case a most patient and most conscientious attention, but crippled as he was, partly by the Law of Evidence and partly by the mouths of other parties being closed who had since made the most ample confession of their guilt and of his innocence, he was not able at the trial successfully to defend himself against the charge which was made against him. From a knowledge of the facts, Sir G. Grey had advised her Majesty to grant to Mr. Barber a free pardon, and he trusted their lordships would be of opinion that that was in itself sufficient to purge Mr. Barber of any charge which had been before that made against him, and that it was only a matter of justice that, as the most valuable portion of his life had, in point of fact, been taken from him, he should now be reinstated in his former position as an attorney of this Court, and again have an opportunity, by honest exertion and honest industry, of obtaining that position in society to which his education justly entitled him.

Sir *F. Thesiger* appeared on behalf of the Incorporated Law Society, not for the purpose of offering any opposition to the re-admission of Mr. Barber, but in order respectfully to suggest to their lordships the necessity of some further inquiry before they should come to a decision that he was entitled to his readmission. It was necessary, under the rules of the Court, for any person who applied for his readmission as an attorney to send to the chambers of the Lord Chief Justice of the Court the affidavits which he proposed to use in support of the application; and it had been the practice for some time (and a very useful practice it had become) for the judges to send those affidavits to the Incorporated Law Society, in order that they might have an opportunity of instituting an inquiry into the circumstances, and of ascertaining whether the person so applying for re-admission had placed himself in a position which entitled him to be readmitted. In pursuance of this practice, the affidavit of Mr. Barber was sent to the Incorporated Law Society, and upon that affidavit it appeared that there were

circumstances which really required some investigation before the Court could decide that it was fit and proper that Mr. Barber should be restored to his station in the profession. It appeared that in the letter which accompanied the pardon, the Under-Secretary of State says, that Sir George Grey had very anxiously and carefully considered the papers which had been laid before him, and that he arrived at the conclusion that the case was one in which it was right he should recommend her Majesty to grant Mr. Barber a free pardon, but while he arrived at this conclusion from a consideration of all the documents in his possession, comprising very material circumstances which had transpired since the conviction—

Lord *Denman* inquired of Mr. Serjeant Wilkins, whether there could be any reasonable objection to that which was suggested—whether, as the affidavits had been sent in the regular way to the Law Society, Mr. Barber would not rather wish for an inquiry to proceed before making this application?

Mr. Serjeant *Wilkins* said there was nothing for which Mr. Barber was so anxious as an investigation of the most rigid character; but Mr. Barber felt that a very great portion of his life had been lost to him—that he was now entirely dependent on the contributions of benevolent individuals for his subsistence, and that he was most anxious to be again placed in that position to which he felt himself justly entitled. Investigation he courted in every way. In fact, those who had read his recent publication must see that he challenged it, because the more his case was investigated, the more he felt his claims would appear paramount; and, under these circumstances, after such an intimation from his Lordship, he should best consult Mr. Barber's honour and interest by acceding to it at once.

Sir *F. Thesiger* said, that the inquiry would, of course, not be merely whether Mr. Barber be guilty of the forgery of which he was convicted, but whether there were any circumstances which should prevent his re-admission.

Lord *Denman* assented.

Mr. Serjeant *Wilkins* inquired who the parties were before whom the investigation was to take place.

Lord *Denman* intimated that it might take place before the Council of the Society, but

Sir *F. Thesiger* suggested, that it should be before one of the Masters of the Court.

Lord *Denman* inquired, whether there was any instance of an inquiry on affidavits of that nature? If there was any instance, they should of course pursue it.

Sir *F. Thesiger*. It had been done on an application made by the Incorporated Law Society to strike an attorney off the rolls, and their lordships had referred it to the Master to inquire into the circumstances.

The case was then referred to the Master,—it being understood that the inquiry should proceed before him immediately, and the application to the Court would stand over till next Term.

NOTES OF THE WEEK.

JOINT-STOCK COMPANIES' WINDING-UP ACT.

A LARGE accession of business in the Court of Chancery has arisen under the provisions of this act. We have already concisely reported many of these questions. An important appeal from Vice-Chancellor Knight Bruce, was heard before the Lord Chancellor, on Monday last, the 29th January, in *The Wheal Lowell Mining Company, Exparte Wyld*, M. P., in which it was decided, that the company did not come within the operation of the act, and that the petitioner did not make out a case for the exercise of the equitable jurisdiction of the Court. This and other cases shall soon be laid before our readers.

It might appear at first sight, that the act was defective in its provisions, but we believe the truth is, that many companies are sought to be brought within its beneficial operation, which were never contemplated by the framers of the act. Perhaps it may be advisable to extend its provisions.

DATES IN AFFIDAVITS.—JURAT.

The Court of the Queen's Bench, on the last day of Term, overruled an objection to an affidavit in which the date was partly supplied by reference to the jurat. —— v. *South Western Railway Company*. This reverses the decision in *Foster* v. *Tattersal*, p. 241, *ante*.

OPENING OF PARLIAMENT.

The Queen opened the Parliament in person on Thursday, the 1st instant, and we have read her Majesty's speech with our accustomed anxiety to discover any intimation upon the never-ending subject of Law Reform. We find none, except the lego-political subject of the Navigation Laws, the restrictions on which are again commended to the attention of the legislature. There is further a recommendation to inquire into the operation of the Poor Laws in Ireland. Her Majesty concludes by solemnly trusting that "Parliament will assist her in upholding the fabric of the constitution, founded, as it is, upon the principles of freedom and of justice."

REPEAL OF CERTIFICATE DUTY.

We beg to refer to our Postscript for the latest information on this subject.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Lord Brooke v. *Earl of Warwick.* Jan. 17 and 18, 1849.

DEVISE OF ESTATES FREE FROM DEBTS.—LIABILITY OF RESIDUE.

Where the residue of property was bequeathed, not as a specific, but as an ordinary, gift, estates devised in strict entail, and freed and discharged from all debts, were held not to be primarily liable for the payment of a mortgage debt charged on them, but that the residue was liable after the estates reserved for payment were exhausted.

THE testator by his will devised certain estates called Gatton, in the county of Surrey, in strict entail, to the present Lord Monson, reserving a life interest to Lady Warwick, and providing that the estates should be freed and discharged from all his debts and liabilities. The residue of the property, after giving certain specific bequests, was devised to Lord Brooke, subject to a like proviso of being freed and discharged from all debts and liabilities. For the payment of these debts and liabilities certain other property was subjected by the will; but it appeared that this property would prove insufficient for the payment of a mortgage of 20,500*l.*, secured on the Gatton estates. The question for the opinion of the Court was, whether the mortgage would remain as a charge on the Gatton estates, or whether the residue was not primarily liable. The Court below held that the residue was so liable, and Lord Brooke now appealed from that decree.

The *Lord Chancellor* held, that the opinion of the Vice-Chancellor was right. The testator had evidently calculated that the amount of property secured would prove sufficient for the payment of the debts and liabilities, and under that impression had devised the residue. The residue, however, was insufficient, and as it was not given as a specific, but only as an ordinary, legacy, it would be primarily liable for the payment of the testator's debts after the property reserved had been exhausted.

Appeal dismissed with costs.

Jan. 25.—*Corporation of Rochester* v. *Lee*—Judgment deferred.

— 25.—*Attorney-General* v. *Wilson; Lady Hewley's Charity*—Decree by consent.

— 25.—*Onyon* v. *Washbourne*—Injunction to restrain the use of plaintiff's labels on waterproof dubbing.

— 25.—*Dunnet* v. *Howard*—Appeal allowed: plaintiff, who was arrested under a warrant of attorney, to be liberated on entering into recognisances for his appearance.

— 25, 29.—*Exparte Wyld, In re the Joint-Stock Winding-up Act, Wheal Lovell Mining Company*—Appeal allowed: petition dismissed without costs.

— 26, 27, 29, 30.—*His Royal Highness Prince Albert* v. *Strange, Attorney-General* v. *Strange*—Part heard.—Judgment on Feb. 8.

— 30.—*Mosley* v. *Baker*—Appeal dismissed with costs.

— 30.—*Attorney-General* v. *Corporation of Chester*—Appeal dismissed with costs.

— 30.—*In re The North of England Banking Company, In re Angus*—Stand over until action tried.

— 30.—*Exparte Armstrong*—Stand over until action tried.

— 31.—*Mapp* v. *Elcock*—Judgment of the Court below reversed.

— 31.—*Attorney-General* v. *Corporation of Ludlow*—Interest to be paid on a sum not paid into Court according to order.

— 31.—*Warde* v. *Warde*—*Cur. ad. vult.*

— 31.—*Westby* v. *Westby*—Judgment of the Court below reversed.

— 31.—*Northam* v. *Hepworth*—*Cur. ad. vult.*

Rolls Court.

Penny v. *Watts.* Dec. 6, 11, 1848, Jan. 13, 1849.

CREDIBILITY OF WITNESS.

It is an order of course to examine as to the credibility of a witness after publication has passed.

THIS was a motion to discharge an order of course, to examine as to the credibility of a witness in the cause after publication had passed. It was alleged that the order to examine should not have been of course, but that it ought to have been made on special motion, after due service of notice.

The *Master of the Rolls* said, that he had made inquiry at the Registrar's Office, and of the Rolls' Secretary, as to the usual practice, and he had been informed that similar orders were granted as of course whenever applied for, and were passed in the ordinary practice. An application had been made to Lord Chancellor Bathurst, to discharge a common order of a similar nature for irregularity. His Lordship, however, after consulting Sir Thomas Sewell, M. R., held, that the order was regular. The cases of *Purcell* v. *M'Namara*, 8 Ves. 328, and *Mill* v. *Mill*, 12 Ves. 406, were also authorities on the regularity of the practice. The objection of irregularity on this ground was therefore untenable. As to the objection of delay, it appeared that publication passed on 24th July, and that copies of the depositions were obtained on the 29th July: the objection of delay could not therefore be supported. And

as to the last objection, that there was no clause in the order to prevent the examination from extending to matters in the cause, the ordinary practice did not require any such clause in the order, but if the examination were extended beyond the inquiry as to credibility, the depositions so received might be suppressed. The motion must therefore be dismissed with costs.

Jan. 25.—*Hennet* v. *Leard* — Order made according to arrangement.

— 25.—*Moore* v. *Jones*—Injunction granted to restrain waste.

— 26, 27.—*Sanderson* v. *The Cockermouth and Workington Railway Company* — Stand over.

— 29.—*Dibbs* v. *Goren*—The sums due to the plaintiff to be paid, or lien on shares in property not sold.

— 29. — *Rouse* v. *Rouse* — Arrangement made.

— 29.—*Attorney-General* v. *Corporation of the City of London*—Stand over.

— 31.—*Bridson* v. *Benecke*—Stand over.

Vice-Chancellor of England.

Ladbroke v. *Smith.* Jan. 11, 1849.

SPECIFIC PERFORMANCE.—TIME ESSENCE OF CONTRACT.

Bill for specific performance of a contract dismissed on the ground that the works had not been completed within the specified time, and it appearing that time had been made of the essence of the contract by the defendants.

This bill was filed for the specific performance of an agreement for an assignment of shares in a colliery in Northumberland. The mines had been originally leased by the Countess of Newburgh to the plaintiffs; and an agreement was entered into to assign certain shares of 4,000*l.* each to several persons, among whom the defendants were two. It was provided that certain mining works, then in progress, should be completed; that the Warkworth harbour, from whence the coals were to be shipped, should be rendered, within four years' time, capable of receiving ships of certain tonnage; and that a right of way from the colliery to the harbour should be secured to the purchasers. The purchasers of the shares, with the exception of the defendants Smith and Mills, agreed to perform the contract, but they insisted that the works and harbour had not been completed within the four years, and that the way-leave between the colliery and the harbour had not been secured, except by payment of rent to the owners of the land, to which the defendants contended they ought not to be subjected.

The *Vice-Chancellor* said, that the decree for specific performance would be of course, unless some decisive objection could be made out. Here time was insisted on as being of the essence of the contract, and so in this case it clearly was. A lease had been granted of the coal mines by Lady Newburgh, and Mr. Ladbroke, who represented the original lessees, had entered into a contract with the defendants for the purpose of forming a mining company, and in connection with the colliery, of improving the harbour of Warkworth. The works were covenanted to be performed within a specified time; and, although several agreements were entered into, this agreement as to time had never been altered. It appeared that the works could not be continued without a subscription by the shareholders, and Mills contributed 50*l.*, but Smith never did so, and protested against the execution of the works, unless executed within the four years. The harbour, however, had never been completed, and did not appear likely to be so. The bill, therefore, would be dismissed with costs, as against the defendants Smith and Mills.

Antrobus v. *Hodgson.* Dec. 22, 1848.

LEGACY TO SURVIVOR.

A testator by his will, dated May 21, 1818, bequeathed, *inter alia*, an annuity of 40*l.* "to his faithful old servant Anne Bagnal," to be paid every six months out of his 3 per cent. consols, and the remainder of the stock to "Nancy Mackenzie." The fund, out of which the annuity was payable, was, by a codicil bearing date November 15, directed to be transferred after Anne Bagnal's death to the testator's cousins, J. and J. Nowell, "the survivor or *survivors*" of them in equal shares. J. and J. Nowell, however, died before Anne Bagnal.

Craig appeared for the trustees; *J. Parker*, Q. C., and *Lloyd*, for the survivor's personal representative, and *Bethell*, Q. C., and *Lewis*, for Mrs. Mackenzie.

The *Vice-Chancellor* said, that the word "survivors" rendered the sentence very obscure; the only construction that could be put on the bequest was, that it constituted a gift to J. and J. Nowell, with benefit of survivorship. The representative of the survivor would, therefore, take the fund.

Jan. 25.—*Drioli* v. *Sedgwick*—Security for costs to be given in a week: otherwise bill to be dismissed.

— 26. — *In re Sowerby's Charity*—Order of sale of houses where the income was small.

— 27, 29, 30.—*Tomlinson* v. *Troughton*—The plaintiff to be allowed the sums paid for agency, and not charged interest on his balance.

— 25, 31.—*Coleman* v. *Mellersh*—*Cur. ad. vult.*

— 31.—*Willey* v. *The South Eastern Railway Company*—Injunction to restrain railway company from entering on plaintiff's lands without first making compensation.

Vice-Chancellor Knight Bruce.

His Royal Highness Prince Albert v. *Strange.* Jan. 16, 1849.

INJUNCTION.—COPYRIGHT.

An injunction continued, restraining the defendant from publishing a catalogue of certain etchings obtained without the consent of the owners.

In this case an injunction had been obtained on the 20th October, 1848, restraining the defendant Strange from publishing certain etchings, and from printing a catalogue of the same. The bill had been amended by adding defendants, and an injunction was granted, on the 6th November, to restrain the other defendants. The defendant Strange filed his answer in December, and gave notice of motion to dissolve the injunction so far as it restrained "the defendant, his agents, servants, or workmen, from selling, or in any manner publishing, and from printing the descriptive catalogue in the bill mentioned, or any work being, or purporting to be, a catalogue of the said etchings." This motion was argued on the 14th and 15th December.

The *Solicitor-General*, *Talfourd*, Q. S., and *W. M. James*, for the plaintiff; *Russell*, *Samuel Warren*, and *Sidney Smith*, for the defendant.

The *Vice-Chancellor*, on the 16th January, after stating the circumstances, cited the following cases:—*Gee* v. *Pritchard*, 2 Swanst. 402; *Donaldson* v. *Beckett*, 4 Burr. 2408; 2 Bro. P. C. 145; *Tonson* v. *Walker*, cited in 4 Burr. 2325; *Webb's case*, Ambl. 695, cited in 2 Bro. P. C. 138; *Forester's case*, Ib.; *Southey* v. *Sherwood*, 2 Mer. 437; *Macklin* v. *Richardson*, Ambl. 694; *Colman* v. *Wathen*, 5 T. R. 274; *Murray* v. *Elliston*, 5 B. & Ald. 657; 1 Dowl. & R. 299; *Millar* v. *Taylor*, 4 Burr. 2303.

His Honour then said: the etchings being executed by the plaintiff and his consort for their private use, being the produce of their private labour, and belonging to themselves, they were entitled to retain them in a state of privacy, and to withhold them from publication. That right was not lost by the limited communication which they appear to have made, nor was it confined to the printing or taking impressions without or beyond their consent from the plates, which were their undoubted property. It extended also to the prevention of persons unduly obtaining a knowledge of the subjects of the plates from publishing, at least by printing, or writing a description of them, whether more or less limited, a summary or catalogue, whether professional or otherwise. The means of composing and forming the catalogue in question must, upon the materials now before the Court, be taken to have been obtained unduly, that is, without the consent of the plaintiff, and without that of his consort, and without any right to do so, moral, equitable, or legal. That the object of printing and publishing the catalogue was money to be gained, no man, of course, could doubt; and that it would be very saleable, and that if copies were to be multiplied, edition after edition would find ready purchasers with or without the autograph, was highly probable for reasons sufficiently obvious. What, however, could be the defendant's right, or that of any person but the owners of the plates, to display them? It was for them to use, or bestow, or withhold absolutely, impressions, nor could a stranger be allowed to say that they should not. They alone were entitled to decide when and how, and for whose advantage their property was to be made use of.

Not only the defendant here was unlawfully invading the plaintiff's right, but the invasion was of such a kind, affecting this property, as to entitle the plaintiff to the present remedy of injunction. Injunction continued.

Jan. 27.—*Morehouse* v. *Newton*—Master's report confirmed.

— 25, 26, 29.—*Howard* v. *Carr*—Compromised.

Vice-Chancellor Wigram.

White v. *Crisp.* Jan. 13, 1849.

SOLICITOR AND CLERK.—GRANT OF ANNUITY.

Where a solicitor executed an annuity deed in favour of his clerk, duly stamped and attested, it will not be set aside for want of consideration, nor on a presumption that it was signed by mistake.

There was a petition to set aside a grant of an annuity of 50*l.* a year, which the plaintiff had made in 1842, and charged on certain of his estates. It appeared that the plaintiff was a solicitor at Cambridge, and that the defendant had been for many years his confidential clerk. On the dismissal of the defendant in 1847, he proceeded to distrain for the arrears of annuity upon the estates charged with the payment thereof. The bill also prayed for an injunction to prevent such distraint. The plaintiff alleged that, prior to the transaction in question, he had promised to sign a memorandum of agreement to pay to the defendant an annuity of 50*l.* a year, in addition to his salary, for so long as he (the defendant) should continue in his service; that the deed had been executed while he was in a hurry, and without proper consideration, and about to leave his office on business; and that he had signed it under the impression that it was the memorandum agreed upon, whereas a deed of grant had been fraudulently substituted by the defendant.

The *Solicitor-General* and *Hare* for the plaintiff; *Wood* and *Beales* for the defendant.

The *Vice-Chancellor* said that, assuming that the deed of grant to have been duly executed and valid at law, there was no ground of impeaching it in equity. The position the defendant held in respect of the plaintiff did not render him incapable of benefiting by such a gift, nor could the plaintiff allege that it was executed by undue influence. But the case alleged was, that it was signed by mistake for another document; this was, however, incompatible with the facts. For it was not a mere memorandum of agreement, but a deed formally

executed and attested, and having affixed a 35*s.* stamp. It was impossible that an experienced attorney could execute such a deed for the purpose of securing the salary of his clerk, which might at any time be stopped by turning him away. The plaintiff must, therefore, be assumed to have known what instrument he was executing, and the alleged case of fraud would fall to the ground. Nor was the deed of such an extraordinary character that the Court, on that ground alone, would set it aside. The course would be to establish the instrument at law. The case would, therefore, stand over, with leave to the plaintiff to bring such action as might be deemed advisable: the defendant admitting that no payments had taken place under the deed.

Jan. 25.—*Griffith* v. *The Great Western Railway Company*—Stand over.

— 25, 29.—*Attorney-General* v. *Thompson*—*Cur. ad. vult.*

— 29.—*Derbishire* v. *Hume*—Dividends already due ordered on removal of distringas to be paid into Court by the trustees, and future dividends to be paid to the plaintiff until further order.

— 31.—*Attorney-General* v. *Thompson*—Discovery ordered, and deeds to be produced.

Queen's Bench.

(Before the Four Judges.)

Newton v. *Belcher*, *Same* v. *Lidiard.*

RAILWAY LIABILITIES.

Persons who join a company and take part in the direction of its affairs are not therefore necessarily liable upon contracts made with the company before they joined it.

In such a case it is a question of fact for the jury, whether the defendant did actually, so far as he was concerned, do anything to validate the contract previously made.

These were actions originally brought to recover a sum of 4,288*l.* 6*s.* 4*d.*, which the plaintiff claimed for advertisements inserted in the different newspapers during the railway mania period. The advertisements in question related to the Salisbury and Oxford Direct Railway Company, and the question raised was, whether under the circumstances of these cases, a provisional committee-man was liable on orders given before he attended the meetings of the provisional committee. It appeared that an order was made by the committee in the regular way, directing advertisements to be inserted in the newspapers. Many were so inserted, and while the order was still in existence, and daily acted on, the defendant joined the committee, and continued to act. The defendant paid 1,000*l.* into Court, and denied his further liability. A verdict had been given for the plaintiff for the amount subsequent to the day on which the defendant joined the committee. A rule had since been obtained to increase the amount.

Sir *F. Thesiger* and *Mr. Bramwell* showed cause against the rule, which was supported by *Mr. Montague Chambers*, *Mr. Ball*, and *Mr. Keane.*

Lord *Denman* said, this was an action by a newspaper agent, for the cost of inserting advertisements for a railway company, between September, 1845, and January, 1846. There was a particular specifying dates. The items on and after the 7th of October constituted the principal subject of contention. The particulars did not specify the order of the 15th of October, nor was any given between the 10th and the 17th of October. The defendant paid the sum of 1,000*l.* into Court, and the question was, whether he was liable for anything beyond that sum. The names of certain persons were published in a prospectus as those of the provisional committee; joined with these names were those of a firm of attorneys in London. The orders for these advertisements were given partly in the names of these attorneys and partly in those of the members of the provisional committee. The order of the greatest importance was that which was given on the 7th of October, purporting to come from these attorneys, directing the prospectus to be inserted in the newspapers, and under this order the advertisements of the 15th October were inserted. There was some difficulty about the proof of the order of the 7th of October, and one of these attorneys disclaimed all knowledge of the writing; nevertheless, this order was read in evidence by consent. As to the insertion of the 15th of October, there was no evidence of a validating of the order of the 7th by any direct act of the defendant. But the defendant took part in the general business of the committee upon the 15th of October, and from that time forward. When the project failed, the defendant joined with other persons to effect a settlement of the concerns of the company, and they employed an attorney to draw up a statement of its affairs. This was treated by the plaintiff as equivalent to an admission by the defendant that he was liable for all the orders on and after the 15th of October. The judge was of opinion that that admission must be applied to the bill of particulars, which had been looked at throughout the trial, and he restricted the amount of damages by that document. The verdict was taken accordingly. A rule had since been obtained to set aside that verdict, and to enter a verdict with increased damages, on the ground that the defendant was liable for all the advertisements inserted after the 15th of October under any orders given before that day. There was no principle shown which authorized the doctrine thus attempted to be established, that persons were to be held liable on existing contracts merely because they joined a company after such contract has been made, and the jurors by their finding had negatived that liability, and the judge had negatived it by the way in which he had used the bill of particulars. In the judgment of the Court, that doctrine could not be supported. Upon these, as well as upon other grounds peculiar to the

case itself, the Court directed that the rule for increasing the damages should be discharged.

Jan. 25.—*Smith* v. *The Queen*—*Cur. ad. vult.*
— 25.—*Vaughan* v. *Matthews*—*Cur. ad. vult.*
— 26.—*Drury and others* v. *The Queen*—Prisoners discharged.
— 26.—*Turril* v. *Crawley*—Rule *nisi* to enter verdict for plaintiff discharged.
— 26.—*Brown* v. *Andrew*—Rule absolute to enter verdict for defendant.
— 26, 27.—*Reg.* v. *Brent*—Rule absolute for mandamus to admit the deputy prothonotary.
— 29.—*Reg.* v. *Hudson*—Judgment for the defendant.
— 29.—*Alcock* v. *The Royal Exchange Assurance Company*—Rule for new trial discharged.
— 29.—*Tucker* v. *Robarts and others*—Rule for new trial, on the ground that there was no evidence to exempt the bankers from their ordinary liability.
— 29.—*Bland* v. *Lord Alvanley*—*Cur. ad. vult.*
— 29, 30.—*Reg.* v. *Justices of Harwich*—Rule absolute to justices to adjudicate upon an information.
— 30.—*Reg.* v. *Cutlar*—Rule absolute for new trial, on the ground of defects in the specification.
— 30.—*Charter* v. *Green and another*—Rule absolute for new trial.
— 30.—*Reg.* v. *The Great Northern Railway Company*—Rule absolute for mandamus to assess damages.
— 30.—*Stanley* v. *The South Wales Railway Company*—Rule absolute for certiorari to remove inquisition.
— 30.—*Exparte Loder, Reg.* v. *Churchwardens and Overseers of St. Andrew, Holborn, and St. George the Martyr*—Rule absolute to the magistrate for payment of money to fireman.
— 30.—*Royle* v. *Dixon*—Rule absolute for new trial.
— 31.— —— v. *South Western Railway Company*—Objection to affidavit of no date in the body of it, overruled.
— 31.—*Boosey* v. *Davison*—Rule for new trial discharged.
— 31.—*In re Barber*—Application for re-admission.[a]
— 31.—*Reg.* v. *Savage*—Rule for new trial refused.—Prisoner for perjury (not being wilful) sentenced to one month's imprisonment.

Queen's Bench Practice Court.

(Before Mr. Justice Patteson.)

Fearon v. *Norval.* Michaelmas Term, Nov. 16 and 18, 1848.

COUNTY COURTS JURISDICTION.

The judge of a County Court has jurisdiction, under the 122nd section of 9 & 10 Vict. c. 95, in cases where the rent of the premises sought to be recovered does not exceed 50l. per annum, and there is no fine, although the annual value may be much greater than that amount. A plaint having been entered by a landlord against his tenant to recover possession of lands and premises, under the 122nd section of 9 & 10 Vict. c. 95, at the hearing the judge decided that the plaintiff was entitled to recover possession, but directed that possession should not be given up by the defendant until some months after.

Held, *that this judgment was a nullity, not being in conformity with the act and the rules made by the judges under the 78th section of it, and that the plaintiff was right in so treating it, and had adopted the proper course in bringing a fresh action in which judgment had been given for him, and that such judgment was regular.*

THIS was a rule calling on the plaintiff to show cause why a writ of prohibition should not issue, directed to him, and the judge of the County Court of Lambeth to restrain them from proceeding any further in this suit. The facts of the case were, that in July, 1847, the plaintiff entered a plaint in the Lambeth County Court against the defendant, under the 122nd section of 9 & 10 Vict. c. 95, to recover possession of certain lands and premises which the defendant occupied as tenant to the plaintiff; the cost of the lands and premises being 40*l.* per annum. On the case coming on to be heard, the judge decided that the plaintiff was entitled to recover possession of the premises; but on its being represented to him that the defendant was a market gardener, and that he had valuable crops in the ground, the judge did not order immediate possession to be given up, but directed that he should be allowed to remain until Christmas, when he was to give up possession to the plaintiff. Subsequently, however, it was thought that it would be unsafe to act upon this judgment, as it did not follow the directions of the act 9 & 10 Vict. c. 95; for by the 122nd section, (under which the proceeding was taken,) the judge is required "to issue a warrant, under the seal of the Court, to any bailiff of the Court, requiring and authorising him, within a period to be therein named,—not less than seven nor more than ten clear days from the date of the warrant, to give possession of the premises to such landlord;" and the form of judgment under this section of the act, framed by the judges under the 78th section, directs that the defendant *forthwith* quit and deliver up possession to the plaintiff, and that a warrant *shall forthwith issue* to enforce the adjudication. It was therefore thought that the proper course was, to bring a fresh action, which was done in the same Court, in May, 1848, when judgment was given for the plaintiff, upon which the present rule was moved for and obtained on two grounds,—*first*, that the case was not within the jurisdiction of the Court, as the annual *value* of the lands and premises was above 50*l.*; *secondly*, that there was, at the time of the commence-

[a] The report of the application of Mr. Barber to be re-admitted is given in a separate article, at p. 271, *ante*.

ment of the suit, a prior judgment existing in respect of the same subject-matter unreversed, and that therefore the judge had no jurisdiction to entertain a second action.

Bovill now showed cause, and contended that as to the first objection, it was clear that the judge had jurisdiction given him by the 124th section in cases either where the *rent* of the premises sought to be recovered did not exceed 50*l.* per annum, or where the *value* thereof was under 50*l.* In this case the rent was under 50*l.*, and it was therefore immaterial what the value was. With regard to the second point, he contended that it was clear that the first judgment was an invalid one and could not be acted on, and that, therefore, the proper course for the plaintiff to adopt was the one taken in the present case to bring a fresh action. He cited *Jones* v. *Jones*, 17 L. J., Q. B. 171; 36 L. O. 33, S. C.; *Fearon* v. *Norval*, 17 L. J. 161.

Davis, contrà.

Patteson, J. As to the first point, I think there is no pretence for saying that if the rent does not exceed 50*l.* per annum, and there is no fine, that the judge of the County Court has not jurisdiction under the 122nd section. In such case it matters not if the value be 20,000*l.* Upon the other point I will take time to consider, and I have some doubt as to whether this section was not intended to apply only to cases where the defendant did not appear.

Cur. ad. vult.

Nov. 18. *Patteson*, J. In the case of *Fearon* v. *Norval*, I disposed of the first point upon the argument. As to the second, it appears that a judgment had already been recovered, and the second action being for the same matter, it was said that the Court had no jurisdiction, and at the time I expressed some doubt; but having looked at the rules framed under the act, and the judges having held it to be necessary that there should be an adjudication upon proceedings under this action, and they considering the clause to apply to all cases, whether the defendant appears or not, I must conclude that the circumstance of the defendant's having appeared does not oust the jurisdiction of the County Court to adjudicate. Then, as to the judgment upon the first occasion, it appears that it was contrary to the act, for it is clear that by the 122nd section and the rules, that there is to be an adjudication, and the order must be for the defendant to quit the premises forthwith, and the warrant is to be executed at a period not later than ten days. But here it was for giving possession on the 24th of December. Upon this the landlord proceeded again, and now the objection that is urged is by a sort of plea of judgment recovered, and no doubt in an ordinary case this would be a good objection. If a judgment is pronounced, it matters not in such cases whether it is good or bad, as it may be reviewed by a writ of error; but in such a case as this there is no possible way of reversing the former judgment, and I think, therefore, the landlord had a right to treat it as a nullity. It would, indeed, be very strange if there should be a judgment upon which the landlord cannot act, and which, nevertheless, prevents him from recovering his property. As the judgment, therefore, was a nullity, the landlord was justified in so treating it, and in proceeding again as he had done. The rule must be discharged.

Rule discharged with costs.

Jan. 25.—*Leech* v. *Fosbroke*—Rule *nisi* for setting aside writ of privilege pleaded by defendant.

— 25.—*Reg.* v. *Bishop*—Rule *nisi* to discharge side bar rule dismissed with costs.

— 26.—*Reg.* v. *Warren and Puller*—Rule *nisi* for admitting to bail refused.

— 27.—*In re the Borough of Cardigan*—Rule *nisi* for mandamus that the town clerk should deliver up the revised list of voters to the mayor of the borough.

— 29.—*In re the South Wales Railway Company and Richards*—Rule *nisi* for certiorari to remove an inquisition before the Sheriff of Glamorganshire into this Court.

— 29.—*In re Taylor and the London, Windsor, Staines, and South-Western Railway Company*—Rule *nisi* to set aside award.

— 29.—*Exparte Barker*—Rule *nisi* to attorneys to render an account of all actions brought and moneys received on account of the applicant.

— 30.—*In re Anon.*—Rule *nisi* to certain attorneys to answer matters in the affidavits.

— 30.—*In re William Owen*—Rule *nisi* for *quo warranto* to clerk of County Court.

— 27, 29, 30.—*Reg.* v. *Drouet*—Bail admitted, defendant 200*l.*, and four sureties in 50*l.* each.

— 30.—*In re the Undersheriff of Worcestershire*—Rule *nisi* for attachment granted.

— 30.—*In re Anon.*—Rule *nisi* to attorney to pay certain money and answer matters in affidavit.

— 31.—*Jones* v. *Pritchard*—Rule absolute to restrain plaintiff from proceeding with six actions until seventh disposed of.

— 31.—*Reg.* v. *Waller*—Certiorari to remove case from the Central Criminal Court to the Queen's Bench granted.

— 31.—*In re Evans, of Liverpool*—Rule absolute to strike attorney off the Roll.

— 31.—*In re the National Land Company*—Rule *nisi* for registering the company.

— 27, 31.—*Pennell* v. *Benton*—Rule absolute to pay over debt and costs, and attachment to answer matters in the affidavit.

— 31.—*In re Dawes*—Reference to the Master.

Common Pleas.

Coe v. *Howard.* Jan. 16, 1849.

NEW TRIAL.—UNDEFENDED ACTION.—ATTORNEY.

Where, by the attorney's negligence, an action was tried as undefended, the Court granted

a rule nisi, upon an affidavit of merits, for a new trial, on the attorney's paying the damages and costs into Court within a week.

The attorney for the defendant, upon searching the Cause List for the Sittings after Michaelmas Term, and finding the cause 13th on the next day's list, prepared his brief and sent a retainer to a leading counsel, and on the day of trial to a junior, accompanied with an intimation that the cause would be on that day. The junior proceeded immediately to the Court, but found the cause had been tried as undefended. No brief had been delivered to the leading counsel. The attorney arrived when the first witness was being examined, and delivered to Mr. Bramwell the brief intended for the leader, with instructions to defend. The learned counsel declined to conduct the defence, but applied for the postponement of the trial, alleging the above facts as grounds for the application. This the Court refused, and would not admit the attorney to defend. The action was consequently tried as undefended, and the jury returned a verdict for the plaintiff: damages 42*l*. An application was now made, upon an affidavit of merits, for a rule *nisi* for a new trial, upon payment of costs of the day by the defendant's attorney.

Gray appeared in support of the motion.

The *Court* granted the rule *nisi* upon the terms applied for: the attorney paying into Court the damages and costs within a week.

Jan. 25.—*Closmen* v. *White*—Rule *nisi* for defendant to be allowed to enter plea, traversing the bailment in an action of detinue refused.

— 26.—*Vincent* v. *Bishop of Sodor and Man.* *Cur. ad. vult.*

— 27.—*Hoare* v. *Dixon*, *Hoare* v. *Dickenson*—Rule absolute to stay proceedings, in an action brought against the defendants for defamation of character.

— 29.—*Dodd* v. *Wigley*—Rule *nisi* to set aside final judgment, discharged.

— 30.—*Shiels* v. *Rait*—Rule *nisi* to deprive the plaintiff of costs under County Courts Act, discharged.

— 31.—*Vines* v. *Arnold*—Rule *nisi* to enter verdict for plaintiff upon leave reserved.

Court of Exchequer.

Bamford v. *Ives and another.* Jan. 19, 1849.

DETERMINATION OF LIABILITY OF SURETIES FOR ASSISTANT OVERSEERS.

Sureties for an assistant overseer at his original appointment are not liable for his default on his being re-appointed upon different terms.

Thomas Ives was appointed by the vestry, under the provisions of the act 59 Geo. 3, c. 12, s. 12, assistant overseer of the parish of Minchin Hampton, in the county of Gloucester, and was to be remunerated for his services by a poundage upon the monies collected by him. The present defendant joined in a bond conditioned that Thomas Ives should duly pay over and account to the parish officers for all monies received by him as such assistant overseer. At the end of the first year Thomas Ives was re-appointed by the vestry, but the terms of his appointment were varied, and he was to be remunerated, not by a poundage, but by a fixed salary of 50*l*. per annum. Thomas Ives was re-appointed for a third year, upon the same terms as on the second year, and during such third year made default. The churchwardens, &c., having sued his sureties on their bond, the question submitted to the Court on a special case was, whether the sureties continued liable upon the re-appointment of Thomas Ives upon terms different to those under which he was appointed when they entered into the bond, or if they were discharged at the expiration of the first year.

Mr. *Hugh Hill* argued the case for the plaintiffs, referring to *Lord Arlington* v. *Merricke*, and notes thereon, 2 Wms. Saund. 403, *b*; *Angero* v. *Keen*, 1 M. & Wels. 390; and *Curling* v. *Johnson*, 3 M. & Sc. 496.

Mr. *Greaves* for the defendants.

The *Court* held that the defendants' liability terminated at the end of the first year. It was the same as if a stranger had then been appointed, for Thomas Ives was re-appointed upon different terms. It made no difference that the same man was in fact re-appointed, as his appointment was upon different terms. Judgment for the defendants.

Jan. 25.—*Dobbs* v. *Penn*—*Cur. ad. vult.*

— 25.—*Angel* v. *Worsley, Bart.*—Part heard.

— 27.—*Harvey* v. *Dakin, clerk*—Rule absolute to discharge the defendant out of custody, on the ground of being a priest in ordinary of one of her Majesty's chapels royal, on payment of so much of the costs of this rule as applied to Mr. Baron Parke's order.

— 29.—*The Shropshire Union Railway and Canal Company* v. *Anderson*—Rule to plead certain pleas which had been disallowed, discharged with costs.

— 29.—*Markham* v. *Hopkins*—Rule to review taxation of costs refused.

— 26, 30.—*Attorney-General* v. *Walker*—Rule absolute for new trial.

— 30.—*Maggioni* v. *Delafield*—Rule absolute to set aside verdict.

— 31.—*Landon* v. *Bicsley*—Rule absolute for new trial.

— 31.—*Sutton* v. *Rawlings*—Rule for giving up premises discharged with costs.

— 31.—*Haldane* v. *Bousfield*—*Cur. ad. vult.*

— 31.—*Governor and Company of Bank of England* v. *Johnson*, (*R. O.*)—*Cur. ad. vult.*

Exchequer Chamber.

Jan. 30.—*Reg.* v. *Sarah Waters*—Conviction affirmed.

BUSINESS OF THE COURTS.

COMMON LAW SITTINGS.

Queen's Bench.

Hilary Term, 1849.

THE Court will, on Thursday the 1st, Friday the 2nd, Thursday the 8th, Friday the 9th, Saturday the 10th, and Monday the 12th, days of February next, hold Sittings, and will proceed in disposing of the business in the Crown Paper, Special Paper, and New Trial Paper, and will also hold a Sitting on Thursday the 1st March next, and give judgment in cases previously argued.

By the Court.

Common Pleas.

This Court will, on Thursday the 8th day of February next, and following days, up to Wednesday the 14th day of February inclusive, (except Sunday the 11th,) hold Sittings, and will proceed in disposing of the business now pending in the *Paper* of *New Trials*, and in the case of "Moneypenny v. Daring" in the *Special Paper*, and will also proceed to give judgment in certain of the matters that will then be standing over for the consideration of the Court.

By the Court.

Exchequer of Pleas.

THE Court will hold Sittings on Monday and Tuesday, the 5th and 6th days of February next, and also on Thursday, the 8th day of the same month, and on every succeeding day, (Sundays excepted) until and including Wednesday the 28th of the same month and will at such Sittings proceed in disposing of the business then pending in the *Paper* of *New Trials*, in the *Paper* of *Demurrers*, in the *Paper* of *Special Cases* and *Motions*, appointed to be brought on with any case in the *New Trial Paper* or *Demurrer Paper*, and also in giving judgment in all matters then standing for judgment.

F. J. POLLOCK.
J. PARKE.
E. H. ALDERSON.
T. J. PLATT.

After Hilary Term, 1849.

IN MIDDLESEX.

Thursday .	Feb. 1	Common Juries.
Friday . . .	2	Customs & Common Juries.
Saturday . . .	3	Excise and Common Juries.
Monday . . .	5	Common Juries.
Tuesday . . .	6	
Wednesday . .	7	
Thursday . . .	8	Special Juries.
Friday . . .	9	
Saturday . . .	10	
Monday . . .	12	
Tuesday . . .	13	
Wednesday . .	14	

IN LONDON.

Thursday . . .	15	Adjournment Day, Common Juries.
Friday . . .	16	Common Juries.
Saturday . . .	17	
Monday . . .	19	
Tuesday . . .	20	
Wednesday . .	21	
Thursday . . .	22	Special Juries.
Friday . . .	23	
Saturday . . .	24	
Monday . . .	26	
Tuesday . . .	27	
Wednesday . .	28	

The Court will Sit at 10 o'clock.

NISI PRIUS CAUSE LISTS.

ARREARS FROM THE SITTINGS AFTER MICHAELMAS TERM, 1848.

London.

Queen's Bench.

D. Richardson	Mackay	(Inj.)	Brooke	Tres. Bannerdale and Co.
Capes and S.	Blackmore	(Inj.)	Burton & ors., exors, &c.	Dt. Alban and B.
Keene	Dean	(Inj.) S. J.	Grace	Dt. Smith
Vincent and S.	Franklin & another	(stayed) S. J.	Davis and others	Covt. Wm. Bevan
Lewis and L.	Brand	(stayed)	Harper	Pro. Few and Co.
W. H. Green	Bond	(Inj.) S. J.	Stanley	Prom. Few and Co.
Phillips	Hartley & another	(stayed)	Manton	Van Sandau & Co.
Pearce and Co.	Robertson	(stayed) S. J.	Dungan	Covt. Norris and Son
C. B. Wilson	Gibbs	(stayed)	Aberdeen	Covt. Gilbert, Hook, & Co.
Jenkinson	Cundell	(stayed)	Harrison and others	Pro. Chester and Co.

Hook	Conyngham, Esq., and others	S. J.	Macgregor	Pro. Tilleard and Co.
Gell and H.	Dickinson	S. J.	Bradley	Pro. Sudlow and Co.
Warter	Sherlock and another	S. J.	Browne	Pro. Campbell and W. Hughes, K. and M.
Starling	Newman (Inj.)		Parry	
R. and W. G. Roy	Walker	S. J.	Satterthwaite	Pro. Vizard and Co.
C. Ford	Edwards & ors., assignees, &c.	S. J.	Cooper	Ca. G. and W. C. Smith
Harbin and W.	Johnson	S. J.	Bradley	Dt. Sudlows
Horwood	Edgar		Beck	Pro. Reddell
R. and W. G. Roy	Harvey, (P. O.)		Pawson	Sci. Fa. Hawkins and Co.
Cox and Co.	Jegon		Long	Dt. Hartley
Tilson and Co.	The West Cornwall Rail. Company	S. J.	Mowatt	Dt. Tatham and Co.
Keddill and Co.	Barry	S. J.	Simpson	Pro. Simpson and Co.
R. and W. G. Roy	Harvey, P. O.	S. J.	Brooke	Sci. Fa. Van Sandau & Co.
Symes and Co.	Blake and others	S. J.	Mellsdeur and others	Pro. Tilson and Co.
Hodgson and B.	Lang	S. J.	Lord Claud Hamilton	Pro. Geo. Ogle Freshfield
Freeman and Co.	Bird and another	S. J.	Smith, secy, &c.	
Hughes, K. and M.	Bell and others, assignees, &c.	S. J.	Scott and others	Pro. Oliverson and Co.
Sewell and F.	Willoughby and others		Munting	Dt. Tucker and S.
Lawrence and Co.	Woods and others		Stephenson	Pro. Shield and Co.
Brace and Co.	Scarnett	S. J.	Carter and another	Issue, Hodgson and Co.
Bracey	Keymer	S. J.	Laurie, knt. and ors.	Ca. Webster
Lofty, P. and Son	Phillips	S. J.	Don, bart.	Pro. Rickards and W.
Same	Collins	S. J.	Same	Pro. Same
Lacey and B.	Baily and another	S. J.	Bradley	Pro. Sudlow and Co.
Tatham and Co.	Barker	S. J.	Colman	Pro. Tilson and Co.
Gregory and Co.	Newton		Ker	Pro. In person
Humphreys	The Queen	S. J.	Hagan	Indt. Martin and Co.
Same	Same	S. J.	Hagan and another	Indt. Same
Same	Same	S. J.	Same	Indt. Misd. Same
Sewell and F.	Nickols	S. J.	Kempton	Dt. Wire and Co.
Maples and Co.	Pybus		Scott and others	Pro. Oliverson
Sewell and F.	Clarke and another	S. J.	Pearson	Dt. Miller and C.
John Clabon	Blinks	S. J.	Ward	Dt. Cutler
Reyoux and B.	Robarts and others	S. J.	Allan	Dt. Van Sandau and Co.
Vardy	Wilson	S. J	Stocks	Pro. Sargent
Sewell and F.	Elliott	S. J.	Lewis	Pro. Wilkinson and G.
Wilkin	Sturt		Day	Pro. Holt
Jones and Co.	Lucas		Blagrave	Dt. Braikenridge
E. Flower	Molyneux and another		Boyd	Dt. E. Moss
Cattarns	Patterson		Carne	Ca. C. Parsons
Sorrell	Smith	S. J.	Hunt and another	Tres. Tooke and Co.
Same	Hill		Westcott	Pro. Parnell and Co.
Webster	Laurie, knt and ors.	S. J.	King	Asst. Towsey
D. Williams	Saltmer		M'Gregor	Dt. In person

Common Pleas.

Vallance and B.	Groom and others	S. J.	Hutton	Trov. Linklaters
J. & J. H. Linklaters	Hutton		Wiles	Trov. Howells
Cotterill	Gouin and others	S. J.	Moore	Prom. Tilson and Co.
Same	Same	S. J.	Shadbolt	Prom. Same
Stafford	Cox	S. J.	James	Prom. James
Minet and Smith	Ewbank	S. J.	Nutteng and another	Ca. { Desborough & B. / Bridger and B.
Rhodes, Lane, and R.	Brown and another, assignees, &c.	S. J.	W. Kempton	Prom. Wire and Child
Pocock and Poole	Jenkinson & another	S. J.	Musgrove and another	Ca. Kilgour and P.
Oliverson and Co.	Grant and others	S. J.	Norway and others	Ca. Fyson and Co.
Same	Kincaird and others	S. J.	Willes, Sec., &c.	Ca. Peile and Son.
Rhodes, Lane, and R.	Brown and another, assignees	S. J.	Norris	Prom. Baker, Rack, & Co
H. J. Barber	Flight	S. J.	Tarleton, clk.	Dt. Williams and M'Leod
S. Walters	Clark	S. J.	Parker and another	Ca. Slee and Robinson
Palmer, F. and Co.	J. Johnson	S. J.	H. Marriott	Prom. Baylis and D.
Finch and Shepherd	Crane	S. J.	James	Prom. W. B. James
J. J. Blake	Stansfield and others, assignees	S. J.	Gladstane	Tro. Woolley
Same	Same	S. J.	Staff	Tro. Holt and Aubin

Coe	Fish	S. J.	Kempson	Dt. & Dtue. Wire & Child
Cotterill	Hancock and another	S. J.	The York, Newcastle, and Berwick Railway Company.	Ca. Williamson and Hill
Collins and R.	Collins and another		Groom & ors. assigns, &c.	Issue, Brown
A. Dobie	Adams	S. J.	Peters	Prom. Hughes and Co.
F. J. Manning	Marnes	S. J.	Desborough, Sec., &c.	Prom. Browning
Emslie and P.	Connop and another	S. J.	Daniel	Prom. Tyrrell
Ashurst	Burton	S. J.	Wilson and others	Prom. Clark and G.
G. Rutherford	Grissell and another	S. J.	James	Prom. Hook
Miller	Roech and another	S. J.	Grylls and others	Prom. J. & J. H. Linklater
Oliverson and Co.	Barry	S. J.	Hill	Prom. Gregory and Co.
Phillips and V.	Dixon and others, assignees, &c.	S. J.	Stansfield	Dtue. Penfold
Taylor and Co.	Hatchard	S. J.	Bovill	Prom. T. M. Cattlin
Oliverson and Co.	Arbuthnott & ors.	S. J.	Sharp	Prom. Gregory, F., & Co.
J. Towne	Cannan and another, assignees	S. J.	Pratt	Trov. Hine & Robinson.
J. & J. H. Linklater	Hutton and others, assignees		Monmouthshire Rail. Co.	Prom. Waddington
A. Jones	Inge	S. J.	Austin	Prom. Wing and Ducane
Wire and Child	Smith	S. J.	Hamilton (Treasurer)	Covt. Gosling
Oliverson and Co.	Barry	S. J.	Simpson and others	Dt. Simpson and C.
Hook	Griffin and another	S. J.	Hope, Esq.	Dt. Rickards and Son
Finch and S.	Williams	S. J.	Maitland	Ca. G. Smith
J. and J. H. Linklater	Bell and another, assignees, &c.		Bell	Dt. W. Lewis
Phillips and V.	Boyd and others	S. J.	Thornton	Prom. Ellis
Wire and Child	Alexander and ors.	S. J.	Coulson	Dt. Sudlow and Co.
R. Cole	Loader	S. J.	Gardener	Prom. Rickards and W.
Glynes	Harrold		Dewey, jun.	Ca. J. and N. Sheffield
Kempson	Pritchard	S. J.	Taylor	Covt. Walthew
S. Walters	Edwards and others, assignees, &c.		Parker	Ca. H. Walker
H. Clarke	Scott, executor, &c.		Henchman	Covt. Horsley
Wilde and Co.	Richardson		Leonino	Prom. Oliverson and Co.
W. H. Green	Price	S. J	Lane	Prom. W. Lane.

Exchequer of Pleas.

Goddard and E.	Grapes	S. J.	Bunney	Ca. Gregory and Co.
Wm. Ley	James P. Ley	S. J.	F. P. Barlow	Pro. Edwards and R.
Same	Arthur Ley	S. J.	Same	Pro. Same
Symes and Co.	Doe dem. Pedley	S. J.	Ferguson	Ejt. Davies and Co.
Fry and Co.	Patent Galvanised Iron Company	S. J.	Santamaria	Pro. Crowder and M.
Teague	Reuter and others, assignees, &c.	S. J.	Evans and another	F. Issue, H. Sheard
Wadeson and M.	Langlois, jun.	S. J.	Reid, Bart., and others	Trov. Crowder and M.
J. B. May	Brine	S. J.	Basalgette	Ca. Grimaldi and Co.
Tatham and Co.	Moore	S. J.	Metropolitan Sewage and Manure Company	Dt. Bailey, and Co.
Same	Same	S. J.	Same	Pro. Same
In person	Cobbett (pauper)	S. J.	Sir G. Grey and another	Tres. Derby and R.
Colley	Palmer	S. J.	De Dopff	Dt. Shearman and S.
Ashurst and Son	Pare	S. J.	Atwood	Pro. Rixon and Son
J. C. and H. Freshfield	Rennie		Thames Haven Dock and Railway Company	Pro. Venning and Co.
T. Walker	Stockton and Darlington Railway Co.	S. J.	Fox, Esq.	Pro. G. S. Ford
Tatham and Co.	Turnbull	S. J.	Reid, Bart., and others	Cov. Crowder and M.
Norton and Son	Dawson	S. J.	Wrench	Pro. Tatham and Co.
W. Taylor	Jones and another		Clements	Pro. Messrs. Hyde
Hall and D.	Hart		Conquest	Tres. Phillips and V.
Shield and H.	Drew and others		Trego	Dt. Dimmock and B.
Malton	Burton	S. J.	Morrison	Pro. Bevan and G.
R. and W. G. Roy	Burmester, (P. O.)		Cropton, sen.	Sci. Fa. Meggison and Co.
Same	Same		Cropton, jun.	Sci. Fa. Same
Tilson and Co.	Atkinson		Ellerton	Pro. J. H. Dixon
Same	Bussey		Same	Pro. Same
Same	Bussey, executor		Same	Pro. Same

Pennyfather and W.	Balmain		Curling	Bar. In person
Shield and Co.	Gell		Lindsay and another	Bar. Weymouth and G.
C. Browne	Perrins		Da Camara	Dt. W. Dawes
Phillips and Son	Pegler and another	S. J.	Hislop	Pro. Todd
C. K. Randall	Hulbert		Jones	Dt. Denton
Gellsley	Isoe and another		Cooley	Pro. Jay
Stevens and S.	Dowsett		Best	Dt. Robson
Ashurst and Son	Pare	S. J.	Attwood, John	Pro. Elmslie and P.
Same	Same	S. J.	Spooner, Esq.	Pro. Maples and Co.
Braham	Jones		Busby	Dt. Lilley
Dunne and T.	Haynes and others	S. J.	Brown	Ca. Hume and B.
T. B. May	Roberts	S. J.	Fleming	Ca. Gardom
Sole and T.	Spence and others	S. J.	Mandsley	Pro. Sharpe
R. and W. G. Ray	Rosanquet, P. O.	S. J.	Bullock	Sci. Fa. Crosby and Co.
Same	Same	S. J.	Shortridge	Sci. Fa. Johnson and W.
M'Leod and S.	Johnson	S. J.	Crofts	Pro. Bell
Phillips and Son	Violett and others	S. J.	Peet	Pro. Hornby and T.
Hopwood and Son	Addington		Stephenson	Dt. Scott and T.
Morris and Co.	Pitt	S. J.	Rittson	Dt. Cottcrill
Chester and Co.	Copland and another	S. J.	M'Henry	Ca. Cornthwaite and W.
Tatham and Co.	Barker	S. J.	Richards and another	Pro. Lowless and Son—Tilson and Co.
Chatfield and Co.	Ridge	S. J.	Gibbons	Dt. H. Lloyd
Hill and M.	Bean	S. J.	General Steam Navigation Company	Ca. Pearce and Co.
Cutler	May, jun.		Taylor and another	Pro. Taylor
Humphreys and M.	Paulet	S. J.	Woolheim	Pro. Kiddell and Co.
Gadsden and E.	Gadsden		Marshall	Pro. Johnston
White, Eyre, and W.	Jones		Morgan	Pro. Messrs. Robinson
Wadeson and Co.	Maginnis and another		Woods and others	Pro. Oliverson and Co.
Wise and Child	Pearce	S. J.	Great Western Railway	Ca. Maples and Co.
Shield and H.	Richardson		Spence	Pro. Mirfin
W. J. Norton and Son	James		Mullen	Dt. O. Gray
Stevens and S.	Thorman		Gulley	Dt. Sanger
M'Leod and S.	Banking and others	S. J.	Willmett	Dt. & Detin. White, Eyre & W.
Fearnhead	Breece and another	S. J.	Lloyd	Pro. Elmslie and P.
Norris and Co.	Wilson		Jones	Pro. Jones and Co.
Ashurst and Son	Coupland	S. J.	Challis	Pro. Hartings
E. J. Sydney	Trewheela		Thomas	Pro. Hodson
In person	Towse	S. J.	Henderson and another	Pro. W. H. Cotterill
J. B. Towse	Young and another		Hutchinson	Pro. Bell and Co.
Colley	Chapman and others	S. J.	Reeves	Dt. Tatham and Co.
Same	Meldola and another		Medlicott	Dt. C. and H. Hyde
W. Murray	Box and another		Hall	Covt. F. Drake
T. Tyrrell	Betts	S. J.	Wyche	Pro. In person
Bird and M.	M'Kellar	S. J.	Harris	Ca. Walsh
G. and E. Hilleary	White and another		Roberts	Dt. J. B. May
Capes and S.	Isavons and another		Thomas	Pro. W. H. Smith
Sidney	Sidney		Curtis and another	Pro. Callow
Bisgood	Chapman	S. J.	Western Gas-light Co.	Pro. Phillips and Son
R. Ellis	Gibson and another		Ryan	Pro. Messrs. Gole
Loughborough	Gann		Hunter	Pro. Clayton
Compigne	Jeakson, P. O., &c.		Gough	Pro. H. Walker
W. Hartley	Rennie		Rennie	Dt. Symes and Co.
Rhodes and Co.	Brown and others, assignees	S. J.	Shotton	Pro. Boulte
G. H. Taylor	Cundale		Charles	Dt. Sissney
E. A. Chaplin	Briggs and another		Attwood and another	Covt. Rixon and Son
R. H. Tyrrell	Langley		Ellis	Dt. Fyson and Co.
Gregory and O.	Osmond		Wright	Pro. H. G. Smith
G. Vincent	Kain		Sirdefield	Pro. Mardon and P.
M'Leod and S.	Follett and others, assignees, &c.		Levy	Pro. Taylor and C.
Symes and Co.	Rennie and others		Rennie	Dt. Walton
M'Duff	Checkley		Williams, clk.	Pro. W. Jones
W. H. Davis	Andrews		Abbott	Ca. Parker and Co.
Maples and Co.	Graham		Brenier	Pro. Martin and Co.
W. Fisher	Marston		Clarke	Pro. Nicholls and D.
Lomas and Son	Steadman		Everett	Dt. Needham
W. Bartholomew	Ingham and another		Sharp	Dt. In person
Hart	Lecerne		Aulagnier	Pro. Brandon
W. Harris	Pope and another	S. J.	Peabody	Pro. Oliverson and Co.
B. Price	Hall		Farrall, jun.	Dt. G. and C. Smith
J. H. Benbow	Whitcomb & another	S. J.	Stothert and others	Pro. Hornby and T.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 10, 1849.

"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

PARLIAMENTARY PROCEEDINGS RELATING TO THE LAW.

ALREADY several notices have been given for consolidating, amending, or altering the law. In the House of Lords, Lord Brougham, on Monday last, the 5th instant, introduced two bills: the first for the consolidation and amendment of the Bankrupt Law, and the second for the consolidation and amendment of the Criminal Law. To the former we shall have particularly to call the attention of our readers, so soon as it shall be printed. We had heard of a "Court of Commerce" Bill, which was privately printed for the consideration of persons learned in that branch of law and practice, and not unacquainted with the effects and consequences of the present defective system. The bill just laid on the table is probably a measure of similar character, but of different name.

In the Upper House, also, the Lord Chancellor proposes further restraints on Corrupt Practices at Elections; Lord Campbell again suggests an amendment of the Law of Marriages in Scotland, and of the Registration of Births there; and the Bishop of London has renewed his proposed measure relating to proceedings affecting the clergy.

The notices in the House of Commons do not as yet so materially concern the profession as those in the Lords, except that Mr. Henry Drummond proposes a Bill for "facilitating the Transfer of Real Property." Measures of this kind have usually emanated from lawyers in parliament, but it may not be unfit that an eminent banker like Mr. Drummond should suggest the *principle* of such a proposition, though we question whether he will be equal to the task of carrying it out into practical operation. Allied to this suggestion is one of a more tangible character by Mr. Headlam,—that of amending the Law for the Transfer of shares in Joint-Stock Companies, and by Mr. Fagan, for legalizing the assignment of Life Policies of Insurance.

Mr. Du Pré intends to suggest an alteration of the place at which the Buckinghamshire Assizes are now held, for the purpose, no doubt, of selecting a town more convenient in locality and better suited in extent of population than Buckingham; and Mr. Wood proposes the substitution of Affirmations in certain cases in lieu of Oaths.

The consolidation and amendment of the Laws relating to Public Roads will be prepared by Mr. Cornewall Lewis; and Sir Harry Inglis requires an alteration in Parochial Assessments with reference to Tithe Rent Charges.

Several propositions are to be made relating to the Law of Parliamentary Elections: by Sir John Pakington, for preventing Bribery; by Sir De Lacy Evans, for altering the Qualification of Voters; and by Mr. Moffatt for excluding Insolvent Members from the House.

The Law of Marriage is again to be mooted by Mr. J. Stuart Wortley, in reference to certain prohibited degrees of affinity; and Sir Harry Inglis has a proposition to submit on the subject of Marriages abroad.

Important improvements have been made for the dispatch of the business of the House of Commons, particularly in the mode of passing bills, and preventing, to some extent, the reiterated discussions on measures before the House. The Resolutions, which were passed on the 5th instant, are as follow :—

"1. That in the present Session of Parliament all orders of the day set down in the Order-book for Mondays, Wednesdays, and Fridays, shall be disposed of before the House will proceed upon any motions of which notices shall have been given.

"2. That at the time fixed for the commencement of public business, on days on which orders have precedence of notices of motion, and after the notices of motion have been disposed of on all other days, Mr. Speaker do direct the clerk at the table to read the orders of the day without any question being put.

"3. That the orders of the day be disposed of in the order in which they stand upon the paper; the right being reserved to her Majesty's ministers of placing government orders at the head of the list, in the rotation in which they are to be taken on the days on which government bills have the precedence.

"4. That no notice shall be given beyond the period which shall include the four days next following on which notices are entitled to precedence; due allowance being made for any intervening adjournment of the House, and the period being in that case so far extended as to include four notice days falling during the sitting of the House.

"5. That the House do meet every Wednesday at 12 o'clock at noon, for private business, petitions, and orders of the day, and do continue to sit until six o'clock, unless previously adjourned.

"6. That when such business has been disposed of, or at six o'clock precisely, notwithstanding there may be business under discussion, Mr. Speaker do adjourn the House without putting any questions.

"7. That whenever the House shall be in Committee at six o'clock, the Chairman do immediately report progress, and Mr. Speaker do resume the chair, and adjourn the House, without putting any questions.

"8. That the business under discussion, and any business not disposed of at the time of such adjournment, do stand as orders of the day for the next day on which the House shall sit.

"9. That when any bill shall be presented by a member in pursuance of an order of this House, or shall be brought from the Lords, the questions "That this bill be now read a first time," and "That this bill be printed," shall be decided without amendment or debate.

"10. That the Committees of Supply, and Ways and Means, shall be fixed for Monday, Wednesday, and Friday, and for any other day on which orders of the day shall have precedence of notices of motions, of which notice shall have been given on the preceding Friday.

"11. That when a bill or other matter (except supply or ways and means) has been partly considered in committee, and the Chairman has been directed to report progress and ask leave to sit again, and the House shall have ordered that the Committee shall sit again on a particular day, the Speaker shall, when the order for the Committee has been read, forthwith leave the Chair without putting any question, and the House shall thereupon resolve itself into such Committee.

"12. That at the close of the proceedings of a Committee of the whole House on a bill, the Chairman shall report the bill forthwith to the House, and when amendments shall have been made thereto, the same shall be agreed to conditionally without debate, and a time appointed for taking the same into consideration.

"13. That with respect to any bill brought to this House from the House of Lords, or returned by the House of Lords to this House, with amendments, whereby any pecuniary penalty, forfeiture, or fee, shall be authorised, imposed, appropriated, regulated, varied, or extinguished, this House will not insist on its ancient and undoubted privileges in the following cases :—

"1. When the object of such pecuniary penalty or forfeiture is to secure the execution of the act, or the punishment or prevention of offences :

"2. Where such fees are imposed in respect of benefit taken or service rendered under the Act, and in order to the execution of the Act, and are not made payable into the Treasury or Exchequer, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus :

"3. When such bill shall be a private bill for a Local or Personal Act.

"14. That after Tuesday, the first day of May next, orders of the day shall have precedence of notices of motions on Thursdays, the right being reserved to her Majesty's ministers of placing government orders at the head of the list, as on Mondays and Fridays."

It will not be uninteresting to some of our readers to know the names of the controverted Elections Committee. They are as follow :—

Mr. Fox Maule,
Sir George Clerk,
Mr. J. Wilson Patten,
Sir Robert A. Ferguson,
Mr. Thornely,
Sir John B. Y. Buller.

So far only has the campaign been opened. We shall, no doubt, have occasion week by week, to record and comment on new proposals, which in some way or other will affect the large class of the profession to which we particularly address ourselves.

THE PRACTICE OF RETAINERS.

The general adoption of the Rules relating to the Practice of Retainers, which were collected by the Incorporated Law Society, and with certain modifications submitted to the Bar, and now published, will much facilitate the business of the Courts. Attorneys, in their zeal for the interests of their clients, are naturally desirous of securing the services of the counsel who are, or are supposed to be, the most effective advocates in the Court in which they practise. In the unsettled state in which the practice was left—a vague and unwritten code—disputes frequently arose in the most important cases, and in which the parties were the most anxious to secure the best possible aid on the hearing of the cause. The solicitors are very properly endeavouring to withdraw the cases in which they may be concerned from "the region of doubt," and reducing the practice to such regulations as will bind all parties and justify their professional conduct to their clients. Hence these rules have been collected.

That they will be cavilled at,—that they will be found imperfect and inapplicable to some cases—must be expected. On almost every question decided on the construction of the rules, one or other party will be dissatisfied. But when did rules of any kind meet with universal, or even general, approbation? The Suitors, the Judges, the Bar, and the solicitors are, however, all interested in upholding a just and convenient practice on this important subject. Having some means in our possession, from long experience and attention to the subject, we shall from time to time lay before our readers such notes and explanations as seem calculated to render the rules better understood, and we trust more readily adopted. We shall commence with

1. *General Retainers.*

Some nice distinctions were afloat regarding the efficacy of a General Retainer to a counsel who *usually* practised in one Court and declined to appear in another without a Special Fee—say of 50 guineas. The old practice was, that a General Retainer extended to *all* Courts, because every counsel has a right to plead in every Court, except in a few instances where the office of pleader has been purchased. Within the last few years, the counsel's clerks have endeavoured to limit a General Retainer to the particular Court in which counsel ordinarily practise. Thus, (not to mention names of the present day, which might be invidious,) suppose a General Retainer were given to Sir James Scarlett, on behalf of *A. B.*, who expected an action to be brought against him. The plaintiff's solicitor, finding that Sir James would be against him if he brought an action in the Queen's (then the King's) Bench, shifted his ground and issued the writ in the Exchequer. The new practice did not allow Sir James's clerk to send to the attorney of *A. B.* He took the Retainer of *C. D.* without more, and the object of the first General Retainer was altogether defeated. The consequence of this practice was, that in order to secure the favourite counsel there must be a General Retainer in each Court, and even three General Retainers would not be sufficient, for the case in some form, either on the part of the plaintiff or defendant, might be carried to one of the Courts of Equity. Now this was a monstrous innovation, and we believe useless, if not prejudicial, to the interests of counsel, for many solicitors advised their clients, from the uncertainty of the practice, not to throw away their money on such doubtful Retainers, but when the briefs were ready to secure the best advocate they could.

The 1st and 2nd of the present regulations place this point on the right footing. They do not attempt to diminish the number of Retainers; they merely restore the old practice, viz., that before a Retainer or brief can be accepted against the client who gave a General Retainer in any Court, notice is to be given to the first client.

But it is now required that the General Retainer shall be followed by a special one within a week after the cause is at issue (s. 4). This was deemed but justice towards the retained counsel, and in most cases will save the trouble of giving any notice of the offer of an adverse Retainer, which, of course, must be declined where the General has been followed by a Special Retainer. It is also provided that the General Retainer is entirely lost in case a brief is not delivered, except where a brief is given only to a junior counsel (s. 5). This regulation is clearly for the advantage of the junior Bar, and is but right towards the client, who ought not to be required on all occasions to deliver briefs to the Senior Bar.

Under the same head of *General* Retainers, the old practice is continued as to their duration, namely, for the joint lives of client and counsel (s. 3). And they are held binding in cases where the client is sued jointly and defends separately, but not if he defend jointly (s. 6).

We shall proceed with the other parts of the Regulations as early as convenient, and trust that ultimately it will be found that an important improvement has been effected in respect of a very vague and uncertain subject.

STAMPS ON TRANSFERS OF MORTGAGES.

To the Editor of the Legal Observer.

SIR,—Immediately after the appearance of my last letter on this subject, I received a communication from a member of the profession in the north, in which the writer, after mentioning that he had noticed my statement that I had been unable to obtain a return of the penalty exacted on the affixing an additional stamp on a transfer of mortgage, in compliance with *Humberstone* v. *Jones*, informed me that a gentleman in his neighbourhood had succeeded, in a similar case in getting such penalty remitted, and inclosed me the address of the London agent of the party, to whom I was at liberty to apply.

My agent having, at my request, called on the firm alluded to, and also on the Solicitor of Stamps, desired me to send him a memorial similar to the one I had before presented, and also an abstract of the deed verified by my signature; with which desire I complied.

The next communication on the subject that I received was an intimation from the Solicitor of Stamps that I would send up the original deed, and my agent added that the Solicitor informed him that if the deed were *found to correspond with the abstract, the penalty would be remitted.* The deed itself, however, had previously been for some time in the hands of the Commissioners of Stamps, and afterwards handed over to the purchaser of the property, so that I was unable to send it again. Notwithstanding the intimation which I have mentioned, that the penalty would be returned, my agent's next letter informed me of the doubts which were unexpectedly entertained, as to my case being one entitled to the relief sought, and the next conveyed an answer to the effect that the board had decided it did not come within the Treasury minute, and that consequently they could not return the penalty.

It seems that the board draw "very nice distinctions," and in order, if possible, to ascertain what the distinctions were, which costing 5*l.* a piece, were practically rather important, I inclosed an abstract of my deed to my correspondent, with a request that he would compare it with his own, and his answer was to the effect that he could discover no difference in principle between the two cases, and that the refusal to return the penalty was "really too bad." This gentleman inclosed a copy of the abstract of his deed, the penalty paid on stamping which was remitted; and I may add that neither could I see a difference in principle in the cases: so that though distinctions between them may exist, they are distinctions without a difference. My correspondent observed that it cost more trouble to get back the penalty than the 5*l.* would pay for; and I can say that the endeavours which I have made, with the like object in view, having extended over a period of almost three months, involving frequent correspondence during that time, two memorials, two abstracts, loss of interest on 500*l.* for a fortnight, and agent's fees, &c., &c., if I *had* got back the penalty, I should not have been a very great gainer.

It must, therefore, be seen that my only reason for addressing you again is the principle of the thing, and the fact that hundreds, perhaps thousands, of 5*l.* penalties hang upon the decision. I ought to mention, as connected with the present question, that I am informed that the Northampton Law Society were about to procure the passing of a declaratory act to meet the difficulty, and only withdrew it on the assurance of the Treasury that the authorities would remit the penalty demandable in consequence of *Humberstone* v. *Jones*, on the ground that the profession were taken by surprise.

A. CHAMBERLAIN.

Portsea, Jan. 23, 1849.

COPYHOLD ADMISSIONS AND STAMPS.

To the Editor of the Legal Observer.

SIR,—It may be, as R. R. observes, useless to state the place of admission, but as the section in the act states that an admittance may be granted at any time and at any place, I think that every admission under such section should show upon the face of it, not only the time, but also the place where the admittance was granted. As in the form I sent you it is expressly stated to have been granted by virtue of the act, none of the objections which your correspondent adduces could be sustained. The word "child" should have been "son." I think the exact relationship of an heir (who is admitted as such) to a deceased tenant should appear on the Rolls, and also that he is the customary heir, in order to facilitate future inquiries into these facts. Every admission should show who was the lord of the manor at the time it was granted. The words "*H. L.*, Lord of ——," were inserted in the form I sent you for that purpose only. As the steward had no power before the act to grant an admittance out of Court, I think that in every one granted by him under such power the act should be referred to, and that such reference is neither objectionable nor useless.

As to the stamp, what "A Steward's Clerk" states as to the general impossibility of granting admissions out of Court and out of the manor, before the passing of the late act, is quite true, but their being only *generally* granted in Court proves that they were not always so granted, and that in some cases they might be and were granted out of Court. Such

being the fact, it appears to me that the words "out of Court," in the 55 Geo. 3, can neither be confined nor extended to mean "at a special Court;" and that the words "in Court" cannot be construed to mean only "in a general Court;" and I presume your correspondent will allow that whether a person is admitted at a *general* or at a *special Court*, he is admitted "*in*" and not "*out of Court.*" The section of the 48 Geo. 3 to which he refers me, is expressly confined to copies of admittances, &c., granted *in Court*. The 32nd section imposes a penalty of 50*l.* upon every steward who puts an admission, &c., granted out of Court upon vellum, &c., not duly stamped; and as this enactment is still in force, I do not see how any steward can safely act contrary to it; and I must retain my opinion that the stamp on an admission granted out of Court should be on the admission itself, or on some memorandum thereof, and not on the steward's copy; and I submit that neither the practice of any manor, however large, nor the opinion of any person, however eminent, ought to be followed in direct violation of the clear and express provisions of the above acts. E. C. E.

THE MANCHESTER LAW ASSOCIATION.

ANNUAL MEETING.

The Annual Dinner took place on the 10th January, at which about 50 of the members were present. Mr. *Richard M. Whitlow*, president for the year, occupied the chair. The following members of the Association were present from the neighbouring towns: Mr. T. L. Rushton, Bolton; Mr. Summerscales, Oldham; Mr. Robert Norris, Mr. Statham, Mr. J. G. Snowball, Liverpool; Mr. Legh Richmond, Ashton; Mr. Edward Reddish; Mr. Jepson, Stockport.

The *Chairman* gave the "Manchester Law Association." Its objects, he said, were to raise the character and promote the interests of the profession, by exciting and cementing union and harmony among professional men; and by resisting all undue encroachments from whatever quarter. If the result of their Association were to maintain the integrity of the body, surely they could not be regarded as aiming at purely selfish objects. No; the public it was who derived all the benefit from it, and were largely interested in keeping up the character of the body in a professional point of view. The Association had been eminently successful, as was evinced by the position in which it stood towards all the other associations of a similar description throughout the kingdom.

Mr. *Thomas Taylor*, the retiring honorary secretary, responded to the toast. Before the Society was formed, the legal body deeply felt the want of that cordial feeling and of that knowledge of each other as professional men, which ought to exist between those who were practising in the same town. Even next door neighbours did not know each other till business or chance should bring them together. Now, by means of this Association, there had been a kindly feeling between them, and not only they felt it, but the public felt it in the way stated by the chairman, as well as in many other ways; and if it were only for this one thing it would deserve the support and gratitude of every member of the association: that their friends and clients benefited by it. Retiring as he did from office on this occasion, he begged to say that the Society and its members had his best wishes for their prosperity, as they had the best wishes of every right thinking person in the town. He begged to return them his most sincere thanks.

Mr. *Statham*, of Liverpool, said, that he unexpectedly occupied the place of Mr. *Shaw*, of Leeds, in proposing the toast put into his hands. The societies he had to submit to their notice, were "The Provincial Law Society," and "The Metropolitan and Provincial Law Association," whose head office was in London. The first society had not been active this year, the reason of which was, that they had not been called upon. It was like an army of reserve—called into activity when occasion required; and it was not improbable that that Society might be dissolved, because the efforts were not made which were necessary to continue it. The object of its formation had been to create a corresponding feeling of union between the professional public at large—not only in this part of the country, but all over the kingdom. The last-named Society was not only a permanently established association, but it was certain that the best results must issue from its proceedings. Establishments in connection with that Society had been set up in various parts of the kingdom, and especially in Liverpool and Manchester. It was proposed to send a deputation to the southern part of the country, to bring about a personal connection between them and the association in this quarter. In connection with these associations, he begged to couple the name of Mr. Robert Norris.

Mr. *Norris*, in responding, explained that; while the Society referred to by Mr. Statham might be terminated, all the provincial societies, like that of Liverpool and Manchester, would still exist. The Liverpool Society had existed double the period of the Manchester one, rising from a very humble origin to a position of great strength and influence. He referred to its advantages in checking litigation, and denied the assertion that it was an anti-law-reform association. Instead of hindering, they were always ready to do all they could for the promotion of an improvement of the law. But they felt they were most competent to make suggestions, and to prevent reckless legislation. They had much need to do so, for they lived at a time when the parliament, particularly one house, and one portion of that house—the Law Lords—were in the habit of carrying through bills, on which the business experience and knowledge of the law of their members were only too much needed in the way of suggesting improvements.

After some other toasts, not of a professional kind,

Mr. *Cobbett* rose to propose, "The Lord Chancellor and the Judges." As the heads of their profession, the Judges merited their respect. And he might say, without any degree of flattery, that, as the ornaments of the profession, the judges merited something more than mere respect. But not only as lawyers did they owe the judges this debt of gratitude; for to the judges now existing they were indebted as Englishmen for the determination they had evinced to withstand the invasions on the laws of England of foreign ecclesiastics, Scotch pretenders, and modern law legislators. And while the administration of the law of England in the Superior Courts was and had been the very best in the world, the details of that law and the general administration of it through the country was anything but the best in the world. There was an inconsistency, a startling inconsistency, between the administration of the law of the Superior Courts and those other adverse Courts, which he needed not further to describe. No person resident abroad who had ever turned his attention to the opinions entertained by foreigners could have failed to observe that the latter always expressed the highest opinion of the administration of the law of this country. But these foreigners know nothing, and could know nothing of that law, or of its administration, but what they know of its administration in the highest Courts of the kingdom. Of the gentlemen present, who could boast of a client, which of the latter, after some experience of it, could be found to entertain such a feeling for the laws of England? It was not the real law of England, however, but the abuses of it, and the interferences with it, and those arbitrary changes in it, which caused this feeling in the minds of the people, and which were utterly at variance with the principles supposed to guide the operation of the law in general. He could not help adverting to two circumstances, which, though small in themselves, as referring to acts passed during last Session of Parliament, were tending to render the difficulties of the law in its administration before the Courts of Petty Sessions more difficult. An act was passed declaring that no objections on the ground of imperfection in the statement which did not interfere with its form or substance, could invalidate an information. A man was recently summoned before the magistrates, but it turned out that there was no information at all. This was an imperfection which would have been thought by most to have been one interfering with the substance of the information, but the magistrates held that the act cured the defect. They convicted the man in nothing, but inflicted a penalty of 10*l*. In another case it was enacted, that a *primâ facie* case being made out against a party, he ought to be sent to trial. Parliament intended, and might have thought, that they were making an improvement in passing that law. Under it a man was brought up before the magistrates. Everything adduced against him tended to prove his innocence. Everybody who heard the charge thought him innocent, and yet that man is committed to prison, tried and acquitted, at an enormous cost to the country, for the evidence was such that no jury would think of condemning. These were two instances of modern legislation to improve the laws. He hoped the endeavours of the Law Society would be such as to merit the compliments paid them, and that they would do something to remedy those evils, and to check that torrent of poisonous improvement with which they are now inundated.

Mr. *Rushton* proposed "The Committee of the Manchester Law Association." The Chairman and other gentlemen had well described the advantages of the Association, and he would not go over the ground again. Associations worked by means, and all who knew the committee of the Association were aware that theirs was no idle task, and that to them the Association was indebted for whatever good had been done by it. He referred to the friendly communications going on between the Commercial Association, the Chamber of Commerce, and this Association, on the subject of an alteration of the Law of Debtor and Creditor. The former would bring their experience to bear upon the commercial aspects of the question, and the latter would point out the necessities of the law and its principles, by which there was a hope of a better legislation than they had sometimes seen on such subjects. Another subject coming within the cognizance of the Association was, the indicting of members of their own profession who had been guilty of illegal practices. He believed the profession never stood higher than it did then, since it first had an existence. Solid, substantial acquirements in the lawyer were now more looked for than the power of a flashy cleverness, as a legal adviser.

Mr. *T. P. Bunting* responded, and referred to the inquiries of the Committee in the matter of the Law of Bankruptcy, more particularly with reference to its administration in their own local courts. Again, there was the subject to which Mr. Rushton had called attention—the malpractices of individual members. He did not wish to press hardly upon any unfortunate man; but where such malpractices did occur, he held that such persons should be rightly dealt with, in order that the law's integrity and the honour and character of the profession might be vindicated. Then again, there was the obnoxious Certificate Duty. Manchester was the seat of free trade, and at this very time the principles of free trade were being advocated in another place;—and here was a tax laid upon an article of which there was a large consumption, and which they as a body were privileged to supply. This being the era of financial reform, some demanding one reduction, some another, he hoped that when their Chancellor of the Exchequer came into power he would repeal the Certificate Duty, of which they so justly complained. The primary objects of the Association, was to cultivate good fellowship between the members, and thereby

to do good to each other, as well as to render a service to society. If they secured these objects they would have the reward in their own bosoms.

The health of the late honorary secretary, Mr. Thomas Taylor, was then given, with great applause.

Mr. *Taylor* replied, that if anything he had done as honorary secretary had tended to cement good will amongst the members, he was amply rewarded for his exertions. It was now between 10 and 11 years since the Association was originated, and from many now absent, as well as from many he saw before him—indeed from all—he had ever received the utmost kindness and cordiality.

Mr. *Langworthy* proposed the health of the president, which

Mr. *Whitlow* acknowledged. With an extension of the favour they had shown to him that night, he hoped to support the presidency with some satisfaction, and to the best interests of the members.

Mr. *Earle* proposed the health of the newly-elected secretary, Mr. Street, who, if he shone a little less than their last worthy secretary, and was not able to come up to the pre-eminency which had secured to that gentleman and to the Association the satisfaction of the profession throughout the kingdom, he would at all events gain the respect and esteem of the members. The universal feeling of the committee, when spoken to without concert on the subject, pointed out Mr. Street as the man to be appointed.

Mr. *Street* briefly acknowledged the toast.

CIRCUITS OF THE JUDGES.

. *Patteson*, J., *will remain in Town.*

WESTERN.

Lord *Denman*, L. C. J., and *Williams*, J.

Thursday, March 1, Winchester.
Thursday, March 8, Salisbury.
Tuesday, March 13, Dorchester.
Saturday, March 17, Exeter and City.
Monday, March 26, Bodmin.
Saturday, March 31, Taunton.

MIDLAND.

Wilde, L. C. J., and *Maule*, J.

Saturday, March 3, Oakham and Northampton.
Thursday, March 8, Lincoln and City.
Monday, March 12, Nottingham and Town.
Friday, March 16, Derby.
Tuesday, March 20, Leicester and Borough.
Saturday, March 24, Coventry.
Tuesday, March 27, Warwick.

NORFOLK.

Pollock, L. C. B., and *Rolfe*, B.

Saturday, March 3, Aylesbury.
Thursday, March 8, Bedford.
Monday, March 12, Huntingdon.
Wednesday, March 14, Cambridge.
Tuesday, March 20, Bury St. Edmunds.
Monday, March 26, Norwich and City.

HOME.

Parke, B. and *Wightman*, J.

Tuesday, Feb. 27, Hertford.
Monday, March 5, Chelmsford.
Saturday, March 10, Maidstone.
Monday, March 19, Lewes.
Saturday, March 24, Kingston.

NORTHERN.

Alderson, B., and *Coleridge*, J.

Tuesday, Feb. 13, Lancaster.
Friday, Feb. 16, Appleby.
Monday, Feb. 19, Carlisle.
Thursday, Feb. 22, Newcastle and Town.
Tuesday, Feb. 27, Durham.
Saturday, March 3, York and City.
Saturday, March 17, Liverpool.

OXFORD.

Coltman, J., and *Platt*, B.

Monday, Feb. 26, Abingdon.
Thursday, March 1, Oxford.
Tuesday, March 6, Worcester and City.
Saturday, March 10, Stafford.
Saturday, March 17, Shrewsbury.
Thursday, March 22, Hereford.
Saturday, March 24, Monmouth.
Thursday, March 29, Gloucester and City.

NORTH WALES.

Cresswell, J.

Monday, March 12, Welchpool.
Thursday, March 15, Bala.
Saturday, March 17, Carnarvon.
Thursday, March 22, Beaumaris.
Monday, March 26, Ruthin.
Thursday, March 29, Mold.
Saturday, March 31, Chester.

SOUTH WALES.

Erle, J.

Tuesday, Feb. 27, Swansea.
Thursday, March 8, Haverfordwest and Town.
Tuesday, March 13, Cardigan.
Saturday, March 17, Carmarthen.
Friday, March 23, Brecon.
Wednesday, March 28, Presteign.
Saturday, March 31, Chester.

REPEAL OF THE CERTIFICATE DUTY OF ATTORNEYS.

A PETITION to the House of Commons from the Incorporated Law Society has been prepared for the Repeal of the Certificate Duty, and will be presented, we understand, in a few days. It contains all the facts connected with the origin and increase of the Tax, and its annual amount at the present time, together with a statement of the grievous hardship to which several hundred members are subjected by its operation.

The several Law Societies in the country, as well as the Metropolitan and Provincial Association, will, we expect, cordially co-operate in the measures necessary to bring the subject fully and favourably before the House. There will, we trust, be one united effort made at as early a period as possible, and that minor differences of opinion will not stand in the way of a simultaneous application to the justice of parliament.

RECENT DECISIONS IN THE SUPERIOR COURTS,

AND SHORT NOTES OF CASES.

Lord Chancellor.

In re 11 & 12 *Vict. c.* 45, *and Wheal Lowell Mining Company, Exparte Wyld, M.P.* Jan. 25& 29, 1849.

WINDING-UP JOINT-STOCK COMPANY.

A company having disputed claims upon it, but not being insolvent, cannot be brought within the operation of the Joint-Stock Companies' Winding-up Act, though otherwise liable to its provisions.

Where a question arises upon a doubtful construction of the act, costs will not be allowed.

THE petitioner, Mr. Wyld, had obtained an order from the Vice-Chancellor Knight Bruce, directing that certain payments for debt and costs should be made to him by the Public Officer, for which he as a shareholder had been sued at law, after deducting the amount of calls on Mr. Wyld's shares; or that the company should be wound-up and dissolved under the Joint-Stock Companies' Winding-up Act, 11 & 12 Vict. c. 45. And from this order the company now appealed.

Rolt and *Follett* for the appellants; *Bacon* and *J. H. Palmer* for the respondents.

Cur. ad. vult.

The *Lord Chancellor*, on the 29th Jan., delivered judgment. The company in this case existed prior to the passing of the act, which by section 1 enacted, that this act should "apply to all companies, corporate or incorporate, within the provisons of either of the two acts, 7 & 8 Vict. c. 111, and 8 & 9 Vict. c. 98, including all companies existing on the 1st day of November, 1844, and which shall have obtained, or shall obtain, a certificate of registration under the act 7 & 8 Vict. c. 110, and to all companies which would have been within the provisions of either of the said two acts, if they had not been dissolved, or had not ceased to trade at the time of the passing thereof respectively, and to all banking companies which would have been within the provisions thereof if they had not been specially excepted from the provisions of the 7 & 8 Vict. c. 110, and to all companies which, under the provisions of the said Act to facilitate the Dissolution of Railway companies, shall, before 1st March, 1848, have become bankrupt, and to all companies, associations, and partnerships to be formed after the passing of this act, whereof the capital or the profits is or are divided or to be divided into shares, and such shares transferable without the express consent of all the copartners." This company was not included in this section. By the second section, however, it was enacted, that "all associations or companies formed for the purpose of working mines or minerals, and all benefit building societies other than such as are duly certified and enrolled under the statutes in force respecting such societies, shall be liable to the operation of this act." It was important to observe that, if this company, from being mentioned in the second section, were within the operation of the act, the second section would be independent of the first, and the first might be omitted altogether, though it enumerated the companies to which the act was applicable, and the other sections were only directory. But the 7 & 8 Vict. c. 110, which this act was intended to amend, mentions banking companies, benefit societies, and building societies, as excluded from its operation, as well as mining companies on the cost-book principle. The more recent act was intended to include certain companies excluded by the earlier one, and they were enumerated in section 1. And on comparing the sections of these two acts, it was clear that mining companies on the cost-book principle, existing before the 11 & 12 Vict. c.

45, were not intended to be included within its operation. Then, as to the circumstances which it was alleged entitled the petitioner to equity:—it was not proposed by the new statute to deal with companies that were solvent any more than the previous act, but with those that were unable to meet their liabilities. The tests of the company's solvency were, a creditor suing and obtaining a judgment against them and not being paid within a given time, or a shareholder being sued and not relieved by the company within a reasonable time. And in these cases a discretion was given as to the relief prayed. In this matter, however, a sufficient case had not been made out to justify the Court, in its discretion, to order the relief prayed, even assuming the company were within the operation of the act. There was a mere dispute between the petitioner, a shareholder, and the company, and no test was afforded of the company's insolvency. The petition must, therefore, be dismissed; but as the main question arose upon the construction of the act, which was most obscure, the costs below would not be given, and each party would bear his own costs of appeal.

Exparte Glaholme, In re Joint-Stock Companies' Winding-up Act. Jan. 18, 1849.

CONTRIBUTORY.—ADMINISTRATOR OF DECEASED BROTHER.

An administrator to a deceased brother, not being his legal representative, was held to be wrongly inserted in the list of contributories; and the report was sent back to the Master to be reviewed.

THE petitioner in this case was returned by the Master, as a "contributory" within the act, 11 & 12 Vict. c. 45, (the Joint-Stock Companies' Winding-up Act.) It appeared that he was administrator to his brother, but before the Master he had represented he was not the legal representative of his brother. The Master nevertheless had inserted him in the list of contributories; and the Court below allowed exceptions to the report, and referred the matter back to be reviewed.

Bacon and *Lloyd* for the appellants; *J. Russell* and *Manisty* for the respondents.

The *Lord Chancellor* held, that the decision of the Vice-Chancellor was correct. The case must be referred back to the Master to review his decision.

Appeal dismissed with costs.

Rolls' Court.

Yearsley v. *Budgett.* Jan. 13, 1849.

INJUNCTION.—COPYRIGHT.

Motion to discharge an order to take the bill pro confesso, *on the ground that certain facts had been suppressed, refused.*

THE plaintiff was the proprietor of a medical directory, which the defendant had freely used in compiling a rival work, and a special injunction had been obtained. The plaintiff then proposed to the defendant that he should allow a perpetual injunction to be taken, to save trouble and expense. The defendant's solicitor refused, and threatened to move to dissolve, if the plaintiff did not proceed. The plaintiff, therefore, amended his bill on the 29th February, 1848, and on the 28th March following the defendant's solicitor entered an appearance for him. The time for answering this amended bill expired on the 25th April, and an attachment issued on the 8th May, but could not be served, the defendant not being found, and the solicitor refusing to give his place of residence. Notice of motion for the 16th June was then served on the defendant for leave to take the bill *pro confesso*, which application was granted. The defendant now moved to discharge this order, alleging that facts had been suppressed, which, if stated, would have prevented the order being made. These facts, it appeared, were certain communications, in consequence of which the defendant's solicitor said he understood that the motion for the *pro confesso* order would not be made, and that he had, in consequence thereof, instructed counsel to prepare the defendant's answer.

Temple, in support of the motion; *Turner*, contrà.

The *Master of the Rolls* held, that there was no ground for the present application, and dismissed the motion.

Vice-Chancellor of England.

In re Lady Rosslyn's Trust. Nov. 25, 1848.

TRUST FOR ACCUMULATION.—THELLUSSON ACT, 39 & 40 GEO. 3, c. 98.

A sum of stock was by deed transferred to trustees on trust to accumulate the dividends during the joint lives of A. *and* B., *and on the decease of* A., *if* B. *should be then living, on trust to pay* B. *the dividends of the stock and the accumulations for life, and after the decease of* B., *whether the same should happen in the lifetime of* A. *or not, the capital and accumulations to be in trust for* D. *on attaining* 21, *or marriage:* Held, *first, that in construing the act, the same construction must be applied to a deed as to a will; and secondly, that the above trust was good only for so much of the joint lives of* A. *and* B. *as expired in the lifetime of the settlor.*

LADY ROSSLYN, by a voluntary settlement executed in May, 1817, after reciting that she was desirous of making a provision for Jane Campbell, in case she should survive her husband, and her daughter Charlotte Campbell, transferred the sum of 692*l.* 3 per cent. consols to two trustees, "in trust during the join lives of James Campbell and his wife, the said Jane Campbell, to receive the dividends on the said 3*l.* per cent. consols as the same should

accrue due, and thereupon immediately invest the same in the purchase of like bank annuities, or of other stocks or funds, in their names, or in the name or names of the survivor, his executors, administrators, or assigns, and immediately after the decease of the said James Campbell, if his then wife should be then living, on trust to pay Jane Campbell and her assigns, during her life, the interest and dividends which should from time to time accrue due, as well on the said bank annuities so transferred, as on the accumulation which should be made thereon during the joint lives of the said James Campbell and Jane Campbell, and after the decease of Jane Campbell, whether the same should happen during the lifetime of her husband or after his decease, to stand possessed of the capital of the said bank annuities and of the accumulations thereon, in trust for the said Charlotte Campbell, on her attaining the age of 21 or marriage; and in case she did not attain the age of 21, and without having been married, then on trust for the said Lady Rosslyn, her executors, administrators, and assigns." Lady Rosslyn died in May, 1826, and James Campbell died in October, 1847, leaving his wife, Jane Campbell, surviving. The question was, whether this trust for accumulation was void under the Thellusson Act, 39 & 40 Geo. 3, c. 98.

Mr. *Burdon* contended that the word "or" in section 1 of the statute was conjunctive, and enabled the grantor to combine all the periods mentioned in the act; that if all the periods could not be taken clearly, one might be selected, and the trust must be held good for 21 years from the death of Lady Rosslyn, the grantor.

Mr. *Craig*, contrà, argued that the trust was only good for the life of the settlor, that was to say, for so much of the life of James Campbell as expired during the life of Lady Rosslyn. There was no authority for accumulating for a dry period of 21 years. He cited *Griffiths* v. *Vere*, 9 Ves. 127.

The *Vice-Chancellor* said, the question in the present case arose for the first time on a deed, but it seemed to him, upon looking at the statute, that the same sort of construction must be applied in the case of a deed as of a will. There was nothing in the statute which *absolutely* destroyed the provision that was intended to be made, although it was in form an excess of what was allowed by law. The words of the statute were:—"That no person or persons should, after the passing of that act, by any deed or deeds, surrender or surrenders, will, codicil, or otherwise, howsoever, settle or dispose of any real or personal property so and in such manner that the rents, issues, and profits, or produce thereof, should be wholly or partially accumulated for any longer term than the life or lives of any such grantor or grantors, settlor or settlors." In the present case, Lady Rosslyn had transferred stock to two trustees, directing by deed that they should stand possessed of the stocks and accumulate the dividends during the joint lives of two persons named. Lady Rosslyn died in May, 1826, and the predecessor of the lives died in 1847, and the question was, whether the direction to accumulate during the joint lives of the two was totally void, or whether the construction applied by Sir William Grant, and afterwards confirmed by Lord Eldon in the case of *Griffiths* v. *Vere*, should be made applicable; and, upon reading the words of the statute and the language of Lord Eldon, he was of opinion that the true construction was, that the trust should be taken to be good for so much of the joint lives as did expire in the lifetime of Lady Rosslyn, and therefore, that the fund must be divided, and so much of it as constituted the accumulations from the death of Lady Rosslyn to the death of the predecessor of the two joint lives would belong to her personal estate, and the rest must go according to the trusts of the deed.

Mayhew v. *Reynolds*. Dec. 20, 1848.

AWARD.—PARTNERSHIP ACCOUNTS.

Circumstances in which the Court will not make an award an order of Court.

Upon the dissolution of partnership between plaintiff and defendant, who were solicitors, they could not agree with reference to the overdrawings on the partnership banking account. The matter was, therefore, referred to the arbitration of Mr. Lloyd, of the Equity Bar, who directed by his award, that the monies respectively overdrawn by the partners should be mutually set-off, and that the larger overdrawer should pay the balance so overdrawn.

Bethell and *Glasse* appeared in support of the motion to make the award an order of Court.

Rolt and *Bagshawe* contrà.

His Honour was of opinion that the mode of taking the accounts was erroneous, and refused the motion with costs.

Attorney-General v. *Earl of Stamford*. Jan. 11, 1849.

GRAMMAR SCHOOL. — BOARDERS. — EXHIBITIONS.

The Masters of the Manchester Grammar School held not entitled to take boarders and private pupils to compete for the exhibitions.

The Manchester Grammar School was founded in the 16th year of Henry 8, and by the foundation deed, rules for the regulation of the school and various exhibitions were established. The surplus revenue having accumulated, an information was filed for a new scheme and new regulations, and the present Lord Chancellor, in November, 1840, referred the case to the Master for that purpose, expressing his disapproval of the masters taking private pupils as boarders, who were entitled to compete for the exhibitions. Lord Lyndhurst, however, in 1843, modified Lord Cottenham's decree in this respect. The case now came on for further directions.

The *Vice-Chancellor* said, that Lord Cottenham had made a decree with a general declaration as to boarders, and afterwards Lord Lyndhurst had reversed that declaration, and directed a reference to the Master to inquire whether the taking of boarders was under any sanction from the trustees. It now appeared from the evidence and documents, that the masters of the school had taken the boarders *ex mero motu*, and the hypothesis, therefore, upon which Lord Lyndhurst had proceeded was negatived. The Tiverton School Case, *Attorney-General* v. *Earl of Stamford*, 15 Sim. 193, is applicable to this question, and justifies the making a declaration in general terms, that the masters shall not take any boarders; and, at any rate, these private pupils ought not to compete for the exhibitions. As to the proposal to appoint trustees from among the residents of the town, the Master had suggested that parties, although carrying on business in Manchester, often resided out of the town for the benefit of purer air: under these circumstances, they will not be disqualified from acting as trustees.[a]

Decree accordingly.

Vice-Chancellor Knight Bruce.

Woods v. *Woods*. Nov. 20, 1848.

LEGACY.—SET-OFF.—COSTS.

M. W., by his will, gave his son 100l., and afterwards lent him 100l. on his promissory note. When the testator died the son demanded payment of the legacy, and then the executor sued him on the note. A bill was filed to restrain the action and for payment of the legacy, which made an ineffectual case of set-off, and a verdict was then given for the plaintiff. The bill was dismissed with costs, except so far as they were increased by the claim of set-off.

THIS was a bill for a legacy and an injunction. Michael Woods, by his will, dated in 1839, gave the sum of 100*l.* to his son William Woods, the plaintiff, to be paid to him twelve months after the testator's death, and appointed his son John Woods sole executor. In October, 1843, the testator lent the plaintiff 100*l.*, for which a promissory note, payable on demand, was given. In March, 1846, the testator died, and his will was proved in the following June. The plaintiff, twelve months after the testator's death, demanded payment of the legacy, and thereupon a demand was made by an attorney, on behalf of the executor, for payment of the promissory note, and on the 22nd of March, 1847, the same attorney, by letter, required payment of the debt and interest, amounting to 122*l.* 10*s.*, within ten days, and threatening that if this demand were not complied with, a bill in Chancery should be filed. In May, 1847, the executor, John Woods, commenced an action for the debt, and in June following died, leaving Susan Woods his executrix. On the 4th of October, 1847, Susan Woods brought a fresh action for the debt, and in December the plaintiff filed his bill for the delivery up of the note, and an injunction to restrain Susan Woods from proceeding in the action, &c. The case attempted to be made by the plaintiff was, that the testator had in his lifetime forgiven the debt, and further, that there was a set-off against the claim on account of money lent by the plaintiff to the testator. The common injunction was obtained, but was afterwards, on motion, dissolved, the defendant in equity undertaking not to levy execution if she should gain a verdict for more than debt and costs, less the legacy. Susan Woods gained a verdict, and entered up judgment and levied execution, limited as agreed. The only question remaining for consideration was the costs of the suit, on which point the cases of *Ranking* v. *Barnard*, 5 Madd. 32; *Dryden* v. *Frost*, 3 Myl. & Craig, 670; *Cherry* v. *Boultbee*, 4 Myl. & Craig, 442; and *Williams* v. *Courtenay*, 3 Hare, 539, were cited.

Mr. *Wigram* and Mr. *Bevir* were for the plaintiff: and Mr. *Russell* and Mr. *Lewin* for the defendant.

His Honour said:—This man has, by himself or otherwise, been recklessly and wantonly ruined; I do not say whether by himself or by others, though I might. I think that the action brought against him would have been without apology and without excuse, but for the circumstance that the plaintiff in equity, William Woods, contested the alleged debt. The circumstance of the alleged debt has, in my opinion, some excuse at least for the action. I think it established upon the whole materials before me that William Woods might at any time have obtained the set-off which he has obtained without litigation and without expense, if he had confined his claim to that set-off, and admitted the debt which he now admits. The bill has therefore been filed for two objects, in one of which William Woods fails entirely, as he now admits, and the other of which I cannot, from the materials before me, refuse to believe that he might have obtained without suit. Still, although the action was, as I have said, not without excuse—although it is a proceeding which I think it would be wrong strongly and severely to censure, considering the conduct pursued by William Woods—although it is a proceeding which I can well conceive that a reasonable and well-disposed solicitor might have adopted, yet as I cannot approve of it without qualification, I cannot give the defendant in equity the whole costs of the suit. My decree, therefore, in this most unhappy case must be in substance this:—It being admitted that the judgment debt and costs at law of the defendant Susan Woods, in the pleadings mentioned, have been levied and satisfied, except as to the sum of 10*l.* mentioned in the order of January, 1848, I declare the plaintiff William Woods entitled to retain the sum of 10*l.* in full satisfaction of the principal and interest of the

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[a] See *Attorney-General* v. *Ludlow Corporation*, 2 Phill. 685.

struction of law, performing them for himself: what title could the son set up as against the father?] The decision of the judge might in such a case be conclusive. The judge would, perhaps, have the right to appoint one or the other. At all events, however the case might be as between father and son, it is impossible to say that a stranger could be introduced to the exclusion of either.

Lord *Denman*, C. J. There is nothing in this point. We must take the words of the statute as we find them. It is plain that it was the intention of the legislature that he who held the office at the time of passing the act should continue to do so. Now here it is clear that the principal held the office while his son performed the duties on his behalf. If the words mean anything, they mean that the father, and not the son, was the person to be continued. That is enough to discharge this rule.

Mr. Justice *Coleridge*. I am entirely of the same opinion. The relator, or he who desires to be so here, is the son of the person who held the office at the time the general act was passed. Now the relator must bring himself within the words of the act. I do not think that he does so here, for I cannot agree that he must be considered as holding the office merely because he was performing the duties of it. Sir F. Thesiger relies on the word "*or*" as raising a difficulty in the case. I do not understand it in that sense. I do not understand that the father was disqualified under the statute. He may have been so actually, but he is not shown to be so, for the statute provides for such cases of illness. If we refer the words of disqualification to the quality of the person holding the office, then it appears that the father was an attorney, but then he was qualified under the special provisions of this act to hold the office. Under these circumstances, I think that there is no ground for the rule on the part of the son.

Mr. Justice *Wightman*. It seems to me that the intention of the legislature will be fulfilled by adopting the suggestion of Lord Denman. The words may mean the person who actually holds the office *de facto* or *de jure*, or the person who, not being actually appointed to the office, performs its duties. But here it appears that the person who actually held the office performed its duties by deputy, so that he as the holder would be entitled *de jure*, and if so, he is the person who fulfils all the terms of the statute. At all events, it seems to me in this case that there is nothing to exclude the claim which the father might make, and that consequently this rule on behalf of the son ought to be discharged.

Mr. Justice *Erle* concurred. The act does not mean to put the claim under one of two alternatives, so as to entitle the man who performs the duties while there is another who holds the office. The father here held the office and performed the duties, and the son has no legal ground of claim under the statute.

Rule discharged.

Feb. 1.—*Reg.* v. *Corporation of Liverpool*—Rule for certiorari to bring up order of the Recorder enlarged.

— 2.—*Reg.* v. *Great Western Railway Company—Cur. ad. vult.*

— 2.—*Reg.* v. *Hammersmith Bridge Company*—The rateable value of the bridge to be equally divided between Hammersmith and Fulham parishes.

— 2.—*Reg.* v. *Auditor of the Amersham Union, in re Burnham parish—Cur. ad. vult.*

Queen's Bench Practice Court.

In re Evans. Jan. 23 & 31, 1849.

ATTORNEY STRUCK OFF THE ROLL.

An attorney convicted of obtaining money under false pretences will be struck off the Roll.

THIS was a motion, at the instance of the Incorporated Law Society, to strike an attorney off the Roll, who had been convicted of obtaining money under false pretences. It appeared that a trader at Liverpool, upon becoming insolvent, had requested certain merchants to be his assignees. They assented, and subsequently the attorney applied to them for a sum of money, alleging that there was a distress upon the premises for rent, which, if not paid, would occasion great sacrifice of property. The money was advanced, but was never paid over, and in fact there was no distress whatever. Under these circumstances, an indictment was preferred at the Liverpool Sessions, in September last, when the attorney was found guilty, and sentenced to six months' imprisonment. The Liverpool Law Society established these facts by the necessary affidavits, and the Incorporated Law Society proceeded to make the application.

F. Robinson, in support of the motion.

The *Court* granted a rule to show cause why the party should not be struck off the Roll; and on the last day of Term, no cause having been shown, the rule was made absolute.

Court of Common Pleas.

Cant v. *Hodges.* Jan. 16, 1849.

EVIDENCE.—MISDIRECTION.

Under what circumstances a jury is warranted in finding that a testator undertook to pay a sum during his life, independently of any testamentary disposition.

THIS was a motion for a rule *nisi* for a nonsuit to be entered, or for a new trial on the ground of misdirection. The action was tried before *Wilde*, C. J., at the Sittings after Michaelmas Term. The plaintiff, who was a single woman, had lived with the testator, and had become the mother of a child in 1840. The testator, being very ill in 1844, proposed to the plaintiff, then living with her father, to come and attend him. She accordingly attended him in a lingering illness, not being

treated as a servant, and remained until he died. It was proved that the testator had told the plaintiff's father that he would, if he lived, allow her double what he had put down on a piece of paper. The paper alluded to was as follows:—"To Maria ———. I have requested Alice (the defendant) to give you 20*l.*, (altered to 50*l.*,) which I have named to Septimus, (his brother,) and has nothing to do with my will. I also wish her to let you have your annuity." It appeared that an annuity of 20*l.* had been paid since the birth of the child, which was continued by the will. The aunt of the plaintiff proved that the plaintiff had told her of the alteration in the memorandum. After the death of the testator, the plaintiff produced this paper, and claimed the 50*l.* of the defendant. Upon these facts the jury found a verdict for the plaintiff, damages 50*l.*, leave being reserved to enter a nonsuit, if the Court were of opinion that there was no evidence to go to the jury.

Petersdorff appeared in support of the motion.

The *Court* held, that the evidence warranted the jury in inferring that this was an undertaking by the testator to pay the increased sum of 50*l.* during his lifetime, independently of any testamentary disposition.

Rule refused.

Exchequer.

The Attorney-General v. *Walker*. Jan. 26, 30, 1849.

DUTY-FREE BRICKS FOR DRAINAGE.—CONSTRUCTION OF 2 & 3 VICT. C. 24, S. 18.

Held, (*Pollock*, C. B., *dissentiente*,) *that no bricks are exempted from duty, except those used for the immediate purpose of drainage, and that "necessary" in the act 2 & 3 Vict. c. 24, s. 18, means physically necessary, and applies only to bricks used with reference to the physical necessity.*

Held, *by the whole Court, that bricks are not exempted from duty which are used for some collateral purpose, and not for the purpose of drainage.*

THE 2 & 3 Vict. c. 24, s. 18, enacts, that it shall be lawful to make bricks for the sole purpose of draining wet and marshy lands without being charged with any duty, provided that such bricks shall not be used for any other purpose than in draining wet and marshy lands, and in constructing the necessary drains, gouts, culverts, arches, and walls of the brickwork, proper and necessarily required for effecting and maintaining the drainage of such land, under a penalty of 50*l.*

The defendant, who was employed by commissioners under a local act, (6 & 7 Vict. c. 76,) for draining certain fen lands in Lincolnshire, erected bridges across a drain constructed under this act, and built parapets and wing walls to these bridges for the protection of the public. Upon an information filed by her Majesty's Attorney-General, for using bricks stamped with the word "drain," and which had paid no duty, in these erections, the question was, whether the brickwork in the bridges and parapets and wing walls connected therewith, was work proper and necessarily required for effecting and maintaining the drainage of such land, within the meaning of the act 2 & 3 Vict. c. 24, s. 18. Upon a rule for a new trial, the case was argued by

Sir *Fitzroy Kelly*, Mr. *Watson*, and Mr. *Wilde* for the Crown; and by Mr. *Willes* for the defendant.

Parke, *Alderson*, and *Rolfe*, BB., were of opinion that brick works, however convenient or necessary with reference to collateral purposes, were not within the exemption, which was confined to bricks necessarily used in making drains, gouts, culverts, arches, and wells for drainage. Works which were reasonable were not within the exemption, unless physically necessary for the purposes of drainage. The size and construction of the drain were left to the architect, but he was not at liberty to use duty-free bricks for any purpose but that of drainage, and was not, therefore, permitted to use them in the construction of bridges which were not necessary for drainage, though they might be convenient and necessary to the occupiers of the land. The Chief Baron, at the trial, having directed the jury that the defendant was at liberty to use duty-free bricks for works reasonably and properly necessary, there must be a new trial.

Pollock, C. B., agreed with the other members of the Court, that duty-free bricks could not be used for purposes collateral to the drainage of land, but he still conceived that "necessary" in the act meant reasonably and legally necessary; and if an arch were necessary, he could see no reason why, for the protection of the public, a parapet or a wall might not be equally necessary, as without such a protection on a highway, the person constructing the arch would be indictable for a public nuisance. His opinion was, that bricks were meant by the legislature to be exempted from duty which were physically or legally necessary for drainage purposes. The majority of the Court, however, was of a different opinion, therefore the rule for a new trial must be absolute.

Feb. 5.—*Roberts* v. *Tucker*—Rule to set aside nonsuit discharged.

— 6.—*Grout* v. *Ricketts and others*—Rule absolute for new trial on the ground of misdirection.

— 6.—*Miller and others* v. *Hollingworth and another*—Rule *nisi* to enter verdict on leave reserved, discharged.

Exchequer Chamber.

Feb. 1.—*Halford* v. *Bayley*—Judgment of the Court of Queen's Bench reversed.

— 1.—*Huddersfield and Manchester Railway and Canal Company* v. *Lees*—Arrangement entered into.

Feb. 1.—*Wright and another* v. *The Queen*—Stand over to the next Sittings.

— 1, 3.—*Cobbett* v. *Hudson*—Judgment of the Court of Queen's Bench affirmed.

— 5.—*Flight* v. *Gibbs*—*Venire de novo.*

— 5.—*Wakley* v. *Healey*—*Cur. ad. vult.*

— 5.—*Arden* v. *Davis*—Judgment of the Court of Exchequer reversed.

— 5.—*Ashpitel* v. *Sercombe*—Stand over to the next Sittings.

— 5.—*De Beauvoir* v. *Owen*—*Cur. ad. vult.*

— 5, 6.—*Molton and wife* v. *Camroux*, (*P. O.*)—*Cur. ad. vult.*

— 5, 6.—*Benson* v. *Duncan*—Judgment of the Court of Exchequer affirmed.

— 2, 3, 7.—*Baron de Bode* v. *The Queen*—Judgment of the Court of Queen's Bench affirmed.

— 7.—*Scadding* v. *Latour*—*Cur. ad. vult.*

— 7.—*Ryalls* v. *The Queen*—Judgment of the Court of Queen's Bench affirmed.

— 3, 7.—*Lorent* v. *Scadding*—Part heard.

Judges' Chambers.

(*Coram* Wightman, J.)

In re Mark Fothergill. Feb. 3, 1849.

RE-ADMISSION OF ATTORNEY REFUSED.

Where an attorney swears unqualifiedly that he has not practised since the expiration of his last certificate, and it is proved that he has practised at the Quarter Sessions, the renewal of his certificate will be refused.

It appeared by the affidavit of Mark Fothergill of Selby, in support of an application to renew his certificate, that he had been admitted on the roll of attorneys in the year 1836, and had continued to take out his certificate to the year 1843 inclusive, when he ceased to practise in consequence of pecuniary difficulties. It was then sworn, that since the expiration of such certificate he had not practised as an attorney or solicitor in his own name or in the name of any other person.

The Secretary of the Incorporated Law Society attended with three affidavits from the Hull Law Society, proving that the applicant had acted as an attorney at the quarter sessions, and on being objected to as unqualified, repeatedly asserted in open Court that he was an attorney practising at Selby, and he was allowed to proceed in instructing counsel on the faith of that statement. The affidavits also showed, that he had applied to the clerk of the peace for a subpœna, and in answer to inquiries there, had likewise stated that he was in practice as an attorney, and as such he obtained the writ.

On the part of the applicant an affidavit was produced in reply, explaining that he had only acted as a friend of the party and not as an attorney, but he did not contradict the allegations regarding the subpœna, nor the proceedings in Court. It was proposed on his part to pay the arrears of duty; but

Mr. Justice *Wightman* said, it was not a mere question of terms on which the party could be re-admitted. He had sworn positively that he had not practised, but could not deny the facts stated in the affidavits in opposition. The instances of practising were clearly made out, and he must reject the application altogether.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

Lord Chancellor.

Sittings after Hilary Term, 1849.

AT LINCOLN'S INN.

Thursday	Feb. 8	(The 1st Seal) Appeal Motions and Appeals.
Friday	9	(Petition-day) Petitions unopposed and Appeals.
Saturday	10	Appeals.
Monday	12	
Tuesday	13	
Wednesday	14	
Thursday	15	
Friday	16	(Petition-day) Petitions unopposed and Appeals.
Saturday	17	Appeals.
Monday	19	
Tuesday	20	
Wednesday	21	
Thursday	22	
Friday	23	(Petition-day) Petitions unopposed and Appeals.
Saturday	24	Appeals.
Monday	26	
Tuesday	27	
Wednesday	28	The 2nd Seal—Appeal Motions and Appeals.
Thursday	March 1	Appeals.
Friday	2	(Petition-day) Petitions unopposed and Appeals.
Saturday	3	Appeals.
Monday	5	
Tuesday	6	
Wednesday	7	
Thursday	8	
Friday	9	(Petition-day) Petitions unopposed and Appeals.
Saturday	10	Appeals.
Monday	12	
Tuesday	13	
Wednesday	14	The 3rd Seal—Appeal Motions and Appeals.
Thursday	15	Appeals.
Friday	16	(Petition-day) Petitions unopposed and Appeals.

Saturday . March 17		
Monday . . . 19		
Tuesday . . . 20	Appeals.	
Wednesday . . 21		
Thursday . . . 22		
Friday 23	(Petition-day)	Petitions unopposed and Appeals.
Saturday . . . 24		
Monday . . . 26	Appeals.	
Tuesday . . . 27		
Wednesday . . 28	The 4th Seal	Appeal Motions and Appeals.
Thursday . . . 29	General Petition-day.	

The Court will rise on Wednesday, the 4th of April.

N. B.—Such days as his Lordship sits in the House of Lords excepted.

Master of the Rolls.

AT THE ROLLS.

Thursday . Feb. 8	Motions.	
Friday 9	Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Saturday . . . 10		

AT THE JUDICIAL COMMITTEE.

Monday . Feb. 12		
Tuesday . . . 13		
Wednesday . . 14		
Thursday . . . 15		
Friday 16		

AT THE ROLLS.

Saturday . Feb. 17		
Monday . . . 19		
Tuesday . . . 20		
Wednesday . . 21		
Thursday . . . 22	Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Friday 23		
Saturday . . . 24		
Monday . . . 26		
Tuesday . . . 27		
Wednesday . . 28	Motions.	
Thursday . March 1		
Friday 2		
Saturday . . . 3		
Monday . . . 5		
Tuesday . . . 6	Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Wednesday . . 7		
Thursday . . . 8		
Friday 9		
Saturday . . . 10		
Monday . . . 12		
Tuesday . . . 13		
Wednesday . . 14	Motions.	
Thursday . . . 15		
Friday 16		
Saturday . . . 17		
Monday . . . 19		
Tuesday . . . 20	Pleas, Demurrers, Causes, Further Directions, and Exceptions.	
Wednesday . . 21		
Thursday . . . 22		
Friday 23		
Saturday . . . 24		
Monday . . . 26		
Tuesday . . . 27		
Wednesday . . 28	Motions.	
Thursday . . . 29	Petitions in General Paper.	

Short Causes, Consent Causes, and Consent Petitions, every Saturday at the sitting of the Court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor of England.

AT LINCOLN'S INN.

Thursday . Feb. 8	The 1st Seal—Motions.	
Friday 9	(Petition-day,)	Petitions, (unopposed first,) Short Causes, and Causes.
Saturday . . . 10		
Monday . . . 12	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Tuesday . . . 13		
Wednesday . . 14		
Thursday . . . 15		
Friday 16	(Petition-day,)	Petitions, (unopposed first,) Short Causes and Causes.
Saturday . . . 17		
Monday . . . 19		
Tuesday . . . 20	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Wednesday . . 21		
Thursday . . . 22		
Friday 23	(Petition-day,)	Petitions, (unopposed first,) Short Causes and Causes.
Saturday . . . 24	Pleas,	Demurrers, Exceptions, Causes, and Further Directions.
Monday . . . 26		
Tuesday . . . 27		
Wednesday . . 28	The 2nd Seal—Motions.	
Thursday . March 1	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Friday 2	(Petition-day,)	Petitions, (unopposed first,) Short Causes and Causes.
Saturday . . . 3		
Monday . . . 5		
Tuesday . . . 6	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Wednesday . . 7		
Thursday . . . 8		
Friday 9	(Petition-day,)	Petitions, (unopposed first,) Short Causes and Causes.
Saturday . . . 10		
Monday . . . 12	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Tuesday . . . 13		
Wednesday . . 14	The 3rd Seal—Motions.	
Thursday . . . 15	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Friday 16	(Petition-day,)	Petitions, (unopposed first,) Short Causes and Causes.
Saturday . . . 17		
Monday . . . 19		
Tuesday . . . 20	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Wednesday . . 21		
Thursday . . . 22		
Friday 23	(Petition-day,)	Petitions, (unopposed first,) Short Causes and Causes.
Saturday . . . 24		
Monday . . . 26	Pleas, Demurrers, Exceptions, Causes, and Further Directions.	
Tuesday . . . 27		
Wednesday . . 28	The 4th Seal—Motions.	

Thursday . March 29 The General Petition-day.

The Court will rise on Wednesday, the 4th of April.

N. B.—Short Causes head of Paper on Friday, March 30.

Vice-Chancellor Knight Bruce.

AT LINCOLN'S INN.

Thursday . Feb. 8 The 1st Seal—Motions.
Friday . . . . 9 (Petition-day) Petitions and Causes.
Saturday . . . 10 Short Causes and Causes.
Monday . . . 12 Bankrupt Petitions.
Tuesday . . . 13 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . 14 Bankrupt Petitions and Causes.
Thursday . . . 15 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . . 16 (Petition-day) Petitions and Ditto.
Saturday . . . 17 Short Causes and Causes.
Monday . . . 19 Bankrupt Petitions and Causes.
Tuesday . . . 20 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . 21 Bankrupt Petitions and Causes.
Thursday . . 22 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . . 23 (Petition-day) Petitions and Ditto.
Saturday . . . 24 Short Causes and Causes.
Monday . . . 26 Bankrupt Petitions.
Tuesday . . . 27 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . 28 The 2d Seal—Motions.
Thursday . March 1 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday . . . 2 (Petition-day) Petitions and Ditto.
Saturday . . . 3 Short Causes and Causes.
Monday . . . 5 Bankrupt Petitions.
Tuesday . . . 6 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . 7 Bankrupt Petitions and Causes.
Thursday . . . 8 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . 9 (Petition-day) Petitions and Ditto.
Saturday . . . 10 Short Causes and Causes.
Monday . . . 12 Bankrupt Petitions.
Tuesday . . . 13 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . 14 The 3rd Seal—Motions.
Thursday . March 15 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . . 16 (Petition-day) Petitions and Ditto.
Saturday . . . 17 Short Causes and Causes.
Monday . . . 19 Bankrupt Petitions and Causes.
Tuesday . . . 20 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . 21 Bankrupt Petitions and Causes.
Thursday . . . 22 Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Friday . . . . 23 (Petition-day) Petitions and Ditto.
Saturday . . . 24 Short Causes and Causes.
Monday . . . 26 Bankrupt Petitions.
Tuesday . . . 27 Pleas, Demrs., Exceptions, Causes, and Fur. Directions.
Wednesday . . 28 The 4th Seal—Motions.
Thursday . . . 29 (General Petition-day,) Petitions.
Saturday . . . 31 Short Causes and Bankrupt Petitions.

Vice-Chancellor Wigram.

AT LINCOLN'S INN.

Thursday . Feb. 8 The 1st Seal—Motions and Causes.
Friday . . . . 9 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . . . 10 Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 12
Tuesday . . . 13
Wednesday . . 14
Thursday . . . 15
Friday . . . . 16 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . . . 17 Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 19
Tuesday . . . 20
Wednesday . . 21
Thursday . . . 22
Friday . . . . 23 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . . . 24 Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 26
Tuesday . . . 27 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . 28 The 2nd Seal—Motions and Causes.
Thursday . March 1
Friday . . . . 2 Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . . . 3 Short Causes, Petitions, (unopposed first,) and Causes.

Monday . March	5	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . .	6	
Wednesday . .	7	
Thursday . . .	8	
Friday . . .	9	
Saturday . . .	10	Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . .	12	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . .	13	
Wednesday . .	14	The 3rd Seal—Motions and Causes.
Thursday . . .	15	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	16	
Saturday . . .	17	Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . .	19	Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday . . .	20	
Wednesday . .	21	
Thursday . . .	22	
Friday	23	
Saturday . . .	24	Short Causes, Petitions, (unopposed first,) and Causes
Monday . . .	26	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . .	27	
Wednesday . .	28	The 4th Seal — Motions and Causes.
Thursday . . .	29	General Petition-day.

The Court will rise on Wednesday, the 4th of April.

N. B.—Short Causes head of Paper on Saturday, March 31.

CHANCERY CAUSE LISTS.

Lord Chancellor.

After Hilary Term, 1849.

APPEALS.

S. O.	Hodgkinson	Hodgkinson	appeal
	Ditto	Jackson	
	Allfrey	Allfrey,	ditto
	Stewart	Forbes	ditto
S. O.	Cochrane	Cochrane	ditto
	Lord	Colvin	
	Penny	Watts	ditto
	Ridgway	Gray	ditto
	Knight	Majoribanks	ditto
	Ditto	Gibbs	ditto
	Cooper	Earl of Powis	ditto
	Scarf	Soulby	ditto
	Onslow	Wallis	ditto
	Cudden	Morley	ditto
	Chambers	Siggers	ditto
	M'Intosh	Great Western Rail. Com.	ditto

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

Short, Robinson *v.* Sollory,
S. O., Ashburner *v.* Wilson, fur. dirs. and costs.
Dunston *v.* Dunston, 3 causes, fur. dirs.
Beeston *v.* Ditto.
Gray *v.* Gray,
Ditto *v.* Webb.
Boycott *v.* Morse, 2 causes.
Digby *v.* Boycott, 3 causes.
Edge *v.* Duke, 2 causes.
Bodington *v.* Great Western Railway Company.
S. O., Gregory v. Wilson.
S. O., Myers *v.* Perigal, fur. dirs. and costs.
Thornton *v.* Knight.
Dykes *v.* Taylor, exons.
Drever *v.* Maudsley, 7 causes, fur. dirs.
S. O. G., Smith *v.* Pincombe, 2 causes.
Duff *v.* Chester.
S. O. G., Jones *v.* Francis, fur. dirs. and costs.
Moorley *v.* Smith.
Miller *v.* Priddon.
Attorney-General *v.* Finch, 2 causes.
Surtees *v.* Hopkinson, fur. dirs. and costs.
James *v.* Jones.
S. O. G., Alt *v.* Gregory.
Field *v.* Jennings.
Watt *v.* Symes, 2 causes.
Marks *v.* Solomons, fur. dirs. and costs.
Baxter *v.* Abbott, 3 causes and ditto.
Banner *v.* Strachan, fur. dirs.
Ditto *v.* Ditto, cause.
Baker *v.* Salmon.
Shelton *v.* Watson, fur. dirs. and costs.
Rowland *v.* Witherden.
Earl of Balcarras *v.* Hudson.
Ligoure *v.* Marryatt, fur. dirs. and costs.
Wiseman *v* Barratt, ditto.
Worthington *v.* Morgan.
Coleman *v*, Fielder.
1st *March* Palmer *v.* Goren,
Ditto *v.* Ditto.
Briggs *v.* Deveroux
Ditto *v.* Brenton
Ditto *v.* Stansfeld
Barker *v.* Wylde, 3 causes, fur. dirs. and costs.
Daintree *v.* Day.
Preece *v.* France.
Hutton *v.* Hayley.
Whitchurch *v.* Whitchurch
Ditto *v.* Parrott
fur. dirs, and costs.
Borton *v.* Borton.
Peacocke *v.* Evans.
Short, Sharples *v.* Monk.
Jenkins *v.* Jenkins, 2 causes.
Onslow *v.* Attorney-General.
Collett *v.* Maule, exons. 3 sets.
Ditto *v.* Ditto, fur. dirs.
Bunney *v.* Beckett, 3 causes.
Bingham *v.* Hallam, 6 causes, fur. dirs. & costs.
Cornwell *v.* Brand.
Padbury *v.* Clark.
Follett v. Molyneux.
Menlove *v.* Hogg
Ditto *v.* Trsts. of Liverpool Docks.
Ditto *v.* Ditto.
Short, Bird *v.* Campbell.
Ditto, Bush *v.* Windy.
Peach *v.* Pigou, fur. dirs. and costs.
Purchase *v.* Shallis.
Attorney-General *v.* Montague.
Short, Beecher *v.* Daw.
Dodson *v.* Powell.
Short, Aldred *v.* Adnam, fur. dirs. and costs.
Ditto, French *v.* French, ditto.
Holmes *v.* Walker

Grover *v.* Burningham.
Wheable *v.* Withers.
Countess of Egremont *v.* Thompson.
Luckham *v.* Flower.
Timmis *v.* Brassey, 6 causes, fur. dirs.
Dighton *v.* Bank of England, fur. dirs.
Eyre *v.* Jones.
Low *v.* Graves, fur. dirs. and costs.
Allen *v.* Wilson.
French *v.* Bittleston.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Duncan *v.* Luntley, dem.
Eaton *v.* Ryde, ditto.
Kent *v.* Underhill. } cause and petn.
Capper *v.* Ditto. }
Trin. Term, Stanley *v.* Bulkeley.
Wilkinson *v.* Candlish.
S. O. Milne *v.* Baldwin. } cause and petn.
Ditto *v.* Green. }
S. O., Paterson *v.* Mills.
S. O., Alexander *v.* Bushby, fur. dirs. and petn., pt. hd.
S. O., Hughes *v.* Scarborough, to fix a day.
Powell *v.* Dodson, 2 causes.
Browne *v.* Milne, fur. dirs. and costs.
Lee *v.* Delane.
Rees *v.* Chilton.
Mortimer *v.* Hartley, fur. dirs. pt. hd.
Feb. 15, Penrice *v.* Penrice, fur. dirs. and costs.
Wynne *v.* Price.
Clark *v.* Cook, exons.
Middleton *v.* Youden.
Dunn Gardner *v.* Dunn Gardner, 4 causes, fur. dirs. and costs.
Nisbitt *v.* Fisher.
Howard *v.* Howard
Hulbert *v.* Hulbert.
Billing *v.* Webb, fur. dirs. and petn.
Howkins *v.* Jackson.
Andrew *v.* Andrew, exons., 2 sets.
Daniel *v.* Daniel, exons. and fur. dirs.
Salmon *v.* Gibbes.
Osgood *v.* Osgood.
Lane *v.* Green.
Strong *v.* Strong.
Harding *v.* Tuson.
Attorney-General *v.* Gibbs, fur. dirs. and costs.
Cotton *v.* Penrose.
Bell *v.* Hett.
Johnson *v.* Thompson.
Porritt *v.* Manners.
Dobson *v.* Edwards, 3 causes, fur. dirs.
Hay *v.* Welloughby.
Butler *v.* Vernon
Harwood *v.* Butler } cause and petn.
Ditto *v.* Gainer
Lockwood *v.* Laird.
Johnson *v.* Richards, fur. dirs. and costs.
Holland *v.* Treacher.
Chapman *v.* Chapman.
Chaplin *v.* Howell.
Prior *v.* Westcott.
Williams *v.* Tart, fur. dirs. and costs.
Burcham *v.* Willoughby, fur. dirs.
Foligno *v.* Blogg.
Toovey *v.* Fox.
Emberton *v.* Wood, 5 causes,
Bradney *v.* Yorke.
Evans *v.* Mann, 2 causes,
Davies *v.* Evans, 2 causes.
Farwell *v.* Seale.
Fisher *v.* Smith.
Marshall *v.* Royce, fur. dirs.
Scott *v.* Wilson
Hammond *v.* Swayne, fur. dirs.
Davies *v.* Thoms, ditto.
Hawkes *v.* Capon, 3 causes.
Read *v.* Littler.
Gordon *v.* Hoffre, fur. dirs. and costs.
Bullock *v.* Cotton.
Mop *v.* Buckley.

Vice-Chancellor Wigram.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Last day of Tr. T., Chandler *v.* Corke.
Trin. T., Nesfield *v.* White.
Lander *v.* Ingersoll, fur. dirs. and costs.
Swainson *v.* Muncaster } cause and petn.
Ditto *v.* Swainson }
Marshall *v.* Sladden.
Watson *v.* Masters.
Thornelow *v.* Harrison.
Hepworth *v.* Heslop.
Attorney-General *v.* Jones.
24th Feb., Mossop *v.* Jenkins.
Harrison *v.* Harrison, fur. dirs. and costs.
Atkinson *v.* Parker, ditto.
Atkinson *v.* Attorney-General.
Short, Dyson *v.* Bourne.
Middleton *v.* Reay, exons.
Hayward *v.* Stephens.
Innes *v.* Sayer.
Edwards *v.* Hodges, fur. dirs. and costs.
Fuller *v.* Benett, exons.
Moore *v.* Hewham, 3 causes, fur. dirs.
Kirwan *v.* Daniel.

Causes transferred from the Master of the Rolls, List, by Order, dated 24th Jan. 1849.

M'Calmont *v.* Rankin, 2 causes.
Townshend *v.* Martin, fur. dirs.
Smith *v.* Smith.
Smith *v.* Downton.
Malins *v.* Greenway, 3 causes, fur. dirs. & petn.
Kirkby *v.* Platel, exons.
Ditto *v.* Whitehorne, fur. dirs.
Cross *v.* Sprigg, exons. and fur. dirs.
Newman *v.* Hutton, 2 causes.
Mumford *v.* Chapman.
Douglas *v.* Willes, 4 causes, fur. dirs. and costs
Fussell *v.* Elwin.
Lassener *v.* Lescher.
Price *v.* Berrington, 3 causes, fur. dirs. and costs.
Edgell *v.* Wickham, fur. dirs.
Lucas *v.* James.
Culsha *v.* Cheese, fur. dirs. and costs.
Davey *v.* Birch, 6 causes, fur. dirs. and petn.
Bromley *v.* Wright, 4 causes, fur. dirs. and costs.
Evans *v.* Davies, 5 causes, fur. dirs. and costs.
Smith *v.* Smith, fur. dirs. and costs.
Harrison *v.* Harrison.
Lawrence *v.* West Middlesex Water Works.
Naylor *v.* Naylor.
Short, Beckett *v.* Cawood.
Lee *v.* Elmslie.
Reynell *v.* Sprye, 2 causes.
M'Donnell *v.* Haynes.
Pelley *v.* Wathen, 5 causes, exons., fur. dirs. and costs.
Solicitor-Gen. *v.* Bath Corporation, } fur. dirs.
Ditto *v.* Blair, } and costs.
Ford *v.* Bryant, exons., fur. dirs. and costs.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 17, 1849.

"Quod magis ad NOS
Pertinet, et nescire malum est, agitamus."
HORAT.

NEW BILLS BEFORE PARLIAMENT.

CORRUPT PRACTICES AT ELECTIONS.

We have before us the prints of two bills, to which we directed the attention of our readers when they were first laid before parliament, and which the earliest opportunity has been taken to re-introduce in the present Session.

The first is entitled "An Act to provide for more effectual inquiry into the existence of Corrupt Practices at Elections for Members to serve in Parliament, in certain cases," and was presented to the House of Lords by the Lord Chancellor.

Our readers will remember that a similar measure was laid on the table of the House of Commons by Lord John Russell, shortly before the prorogation of parliament, and our readers were then put in possession of a complete analysis of its proposed provisions.* The clauses contained in the bill now presented do not seem to have undergone any material alteration. As already noticed, the only qualification for a Commissioner under the act is that of being "a barrister of seven years' standing," to the exclusion of attorneys and solicitors, however competent, or whatever may be the extent of their experience in the proceedings at elections. We ventured to protest against this arrangement, as unjust to the larger branch of the profession, and injurious to the public interest, on a former occasion, and nothing has since occurred to satisfy us that the objections to it were not well founded; more especially, when referring to the section under which the Speaker is authorized to appoint "agents," to prosecute inquiries before the Commissioners, (sect. 16.) We find that the qualification of such agents is not defined, and that it is in the discretion of the Speaker to appoint a non-professional "agent," or a barrister, if he should think fit.

One of the provisions of the bill now before parliament appears to be novel, and, as it strikes us, may possibly interfere with the administration of justice, in a manner not contemplated by those who framed it. The present bill contains a clause, to be found in many other proposed measures on the same subject, for the indemnity of persons implicated in corrupt practices, who may be examined and give evidence, either before an Election Committee or a Commissioner appointed under the proposed act. This provision appears to be necessary, in order to carry out the purpose and objects of the bill. It is followed, however, by another clause, the necessity for which seems at least questionable, and the effect of which it is not very easy to anticipate. It is in the words following:—

"That no witness who shall have been examined before any committee re-assembled or acting under this act, or the said act of the sixth year of the reign of her present Majesty, or before any commissioner appointed under this act, shall be *afterwards called* or heard *as a witness* in support of any information or in-

* See Leg. Obs. vol. 36, p. 257.

dictment, or as a witness for the plaintiff, in any penal action, on account of any corrupt practice in relation to which such witness shall have been examined before such committee or commissioner."

The practical effect of this section will be, to render great numbers of persons incompetent as witnesses on criminal trials, and in that respect to interfere directly with the administration of criminal justice. Bearing in mind the political influences which have so constantly prevailed in reference to inquiries as to corrupt practices at elections, and the strong interest and disposition there may be to shelter individuals, and to get rid of the testimony of dangerous witnesses, it is at least possible, that the clause copied above may be rendered available for purposes not altogether consistent with the sincere desire to prevent Corrupt Practices at Elections, which, we have no doubt, influences the noble and learned dignitary under whose auspices this measure has been brought under the consideration of the legislative body. We hope to find this clause considered, and the necessity for it explained when the bill goes into committee. We should be glad to find that opportunity also taken to discuss the question as to the expediency and policy of conferring on the judges of assize, the patronage of appointing commissioners under the proposed act. The independence of the Bar, and the character of the judicial body, cannot be too jealously guarded.

INSOLVENT MEMBERS.

The Bill "to provide for the recovery of Debts from Persons having privilege of Parliament, and for the exclusion of Insolvent Members from the House of Commons," was prepared and brought in by Mr. Moffatt, Mr. W. Evans, and Mr. Brotherton. A similar measure was introduced by Mr. Moffatt, last Session, and the leading clauses were then printed in the *Legal Observer*, (vol. 36, p. 21). The bill now introduced is substantially similar. The preamble recites, that "it is expedient that the privilege of parliament should not be used to protect persons unwilling to satisfy their just debts, from the claims of their creditors; and that persons who shall be proved to be unable or unwilling to pay or satisfy their just debts, shall not be qualified to serve as members."

The operation of the proposed measure is confined to persons who are not traders within the meaning of the Bankrupt Laws; the case of bankrupt members of parliament being already provided for (though as it appears to us insufficiently) by the statute 52 Geo. 3, c. 44. The bill provides, that if any member, not being a trader, shall be indebted in any sum of money, upon any judgment, &c., it shall be lawful for the creditor to apply to the Court in which such judgment, &c., was obtained, to fix a peremptory day for payment. The creditor must give six clear days' notice of his intention to make the application, and if the money shall remain unpaid after the day fixed for payment, the creditor may apply to the Insolvent Debtors' Court for an order vesting the estate and effects in the provisional assignee of the Court. The vesting order is to remain in force six months, but immediately after the expiration of that period, the Insolvent Commissioner must send a certificate thereof to the Speaker, and thereupon the election of the member shall be declared void. In cases where all the creditors are paid or satisfied within six months from the date of the vesting order, it shall be lawful for the Insolvent Court to certify the same to the Speaker of the House of Commons; and in that event, privilege of parliament may be retained, and the member may be entitled to sit and vote. Such are the provisions of this bill, which is intended to embrace the United Kingdom. We believe the measure did not meet with any very extensive support last Session, and we have heard it doubted whether it is likely now to be carried successfully. The subject, however, is so well deserving of consideration, that Mr. Moffatt will be justified in pressing it to a discussion, and in whatever spirit the proposal may be regarded within the walls of parliament, it has unquestionably met with very extensive approval and support from the trading and commercial community.

LORD BROUGHAM'S CONVEYANCE OF REAL PROPERTY ACT AMENDMENT.

By the 8 & 9 Vict. c. 119, being an act to facilitate the conveyance of Real Property, the taxing officers, in estimating the sum proper to be charged for preparing and executing *any deed under that act*, were directed to consider not the length thereof, but only the skill and labour employed and responsibility incurred in the preparation thereof.

In the present bill it is stated to be expedient to extend the same provisions to

the case of *all deeds*, wills, and instruments; and it is, therefore, proposed to enact, that in taxing any bill of costs for preparing *or* executing, or preparing *and* executing any deed, will, or other instrument in writing, it shall be lawful for the taxing officer, and he is thereby required, in estimating the proper sum to be charged for such transaction, to consider *not* the length of such deed, will, or other instrument, but only the *skill* and *labour* employed and *responsibility* incurred in the preparation thereof.

The act is not to extend to Scotland.

It appears that, by the common consent of both branches of the profession, Lord Brougham's Short Conveyancing Forms have been scarcely ever adopted. They are held to apply only to the very simplest cases, and those cases are so few in number that it was scarcely worth while to disturb the settled practice. The old forms of deeds have stood the test of ages: no question can be raised upon them by the most ingenious lawyer. No purchaser nor mortgagee advancing his money, could prudently adopt a new and untried form for the sake of saving a few pounds. The charges on a conveyance, a mortgage, or a lease, amount to a certain per centage on the money paid, and it is not deemed a wise economy to make a small saving at any risk.

The short forms not being adopted, the Taxing Masters have had little or no opportunity of exercising their arithmetical, as well as their judicial powers, in estimating the quantum of *skill*, *labour*, and *responsibility* employed or incurred in conveyancing transactions, and fixing the due proportions of each.

The present bill proposes to give them some employment in these respects. This new principle of taxation is to be extended to *all* deeds, wills, or other instruments in writing. Supposing the profession should continue the established forms, we doubt whether the Masters, in the first instance, or the Courts, on appeal, will reduce the amount of allowance. A case of this sort may occur: a solicitor, after receiving the draft of an important deed, settled by counsel, finds that, according to its present length, it will require a certain number of stamps, but by much care and pains he can save his client one of the stamps and a skin of parchment; will the Master allow him for such care and pains, at the expense of the Chancellor of the Exchequer? and will he allow anything for the *responsibility* he incurs in departing from the advice of his counsel or the well-tried precedent?

ATTORNEYS' ANNUAL CERTIFICATE DUTY.

STATEMENT IN SUPPORT OF THE REPEAL OF THE TAX.

THE Certificate Duty on Attorneys, and a Tax on Warrants to prosecute, were imposed in 1785,[a] to make up an expected deficiency in the Shop Tax; and both Taxes were afterwards repealed.

All the stamps on law proceedings were abolished in the year 1824,[b] as "Taxes on the Administration of Justice."

The Certificate Duty remained, and has been largely increased. At first, if the practitioner resided in London or Westminster, he was charged 5*l.*, and if in any other part of Great Britain 3*l.*

The duty was increased in 1804[c] to 10*l.*, and in 1815[d] to 12*l.* for town, and 8*l.* for country certificates.

A Stamp Duty of 110*l.* was also charged in 1804[c] upon Articles of Clerkship, and 20*l.* upon Admission; and these sums were increased in 1815[d] to 120*l.* and 25*l.*

By the last return made to Parliament on this subject, the amount paid for Certificates from Easter Term 1844, to 8th March, 1845, was 89,222*l.*

And the duties paid on Articles of Clerkship, on an average of the last ten years, calculated from Parliamentary returns, amounted to the annual sum of 57,996*l.*; and on Annual Admissions to 9,900*l.*

These duties are *partial, unequal, and unjust.*

The pupils or apprentices in the medical profession, and in all trades and other business, pay a duty on their Indentures only proportioned to the premium. The premium on Articles of Clerkship does not, on the average, exceed 200*l.*; and, consequently, the duty thereon, if equal justice were observed, ought to be 6*l.* only, instead of 120*l.*

Nor is any other profession than that of attorneys, solicitors, and proctors, charged with similar Stamp Duties; nor is any annual Stamp Duty imposed on the higher branch of the legal profession.

Such duties are not founded on any *just principle of taxation.*

If a tax on the talent and industry of individuals engaged in a lawful calling be at all expedient, it ought to be levied not only on the three learned professions, but equally

[a] 25 Geo. 3, c. 80.
[b] 5 Geo. 4, c. 41.
[c] 44 Geo. 3, c. 98.
[d] 55 Geo. 3, c. 184.

on all merchants, bankers, manufacturers, traders, and others.

A small tax on each would remove the grievance complained of, and at the same time produce far more than the amount now levied unjustly upon attorneys and solicitors.

It is now an established principle that there should be no "*Class Legislation*;" that taxes should be general, and not be imposed for the protection of manufacturing, agricultural, or any other class.

If, therefore, it be wrong to levy imposts on the community for the benefit of a class, it must be equally wrong to impose burdens on one class in exoneration of the rest.

The attorneys and solicitors, in common with their fellow subjects, pay at least their equal share of all the taxes imposed on the community at large.

The Certificate Duty, which falls exclusively on their branch of the profession, amounts, on an average of the incomes of attorneys and solicitors, to 4*l.* per cent.; and therefore, if they are still required to pay the *Income Tax* on their professional earnings, ought they not in fairness and justice to be relieved from the Certificate Duty? otherwise they will be subjected to a burden of double the amount borne by other classes of the public.

By the operation of many recent changes in the law and practice of the Courts, and by enactments relating to deeds and other documents, the emoluments of the profession have been much diminished, although the disbursements continue very nearly the same as heretofore. This is submitted to the consideration of the legislature as another reason, if another were required, why this tax should be repealed.

The severe pressure of the Certificate Tax is strikingly shown by the inability of several hundred attorneys to pay it within the time fixed by the act, the 16th December, in each year. In the last year 399 attorneys did not pay it till the following year, and were consequently excluded from the Stamp-Office Law List. Of these, 116 paid only within the last month of the year; and 191, having neglected for upwards of a year, were compelled to give public notice, and apply to the Court for permission to renew their Certificates.

[This statement comprises the substance of the petition of the Incorporated Law Society to the House of Commons, and will assist the profession in the country to prepare similar petitions.]

RETURNS TO PARLIAMENT.

MARSHALSEA AND PALACE COURTS.

THE following is an abstract of such parts of the Returns to the House of Lords as appear to be professionally interesting, comprising the salaries and emoluments of the several officers of the Marshalsea and Palace Courts in each year, from July 1838 to July 1848, both inclusive.

We shall give the average receipts down to 1848, when the jurisdiction of the Superior Courts was ousted by the County Courts. It will be seen that the receipts were more than doubled by the operation of the County Court Act:—

Mr. John Churcher Hewlitt, Deputy Prothonotary, Secondary Clerk of the Rules, and Taxing Officer.

Average of Fees received in the years 1839 to 1848, both inclusive .	£1,307 5 6
Fees in 1848 . . .	2,814 11 7

This learned officer also received a compensation in 1846 of 738*l.* 15*s.* 3*d.*, for the loss of fees consequent upon the operation of 7 & 8 Vict. c. 96, s. 70.

Mr. Joseph Holden Turner, an attorney of the Court.

Average of Fees, 1839 to 1847	£291 11 2
Fees in 1848 . . .	740 19 2

Besides compensation in the year 1846 for loss of fees and emoluments, under 7 & 8 Vict. c. 96, s. 70, amounting to 700*l.*

Mr. Benjamin Edward Willoughby, an attorney of the Court.

Average fees, 1839 to 1847 .	£ 899 10 11
Fees, 1848 . . .	1,547 9 6

Besides compensation in 1846, 1,900*l.*

Mr. James Dolman, an attorney of the Court.

Average fees, 1839 to 1847 .	£1,295 7 6
Fees in 1848 . . .	2,377 19 4

Compensation 1846, 1,000*l.*

Mr. Mark Blowers Miller, an attorney of the Court.

Average fees, 1839 to 1847 .	£ 314 13 4
Fees in 1848 . . .	1,444 18 4

Compensation 1846, 750*l.*

Mr. Thomas Hicks, an attorney of the Court.

Average fees, 1839 to 1847 .	£ 540 12 6
Fees in 1848 . . .	1,349 14 0

Compensation 1846, 900*l.*

Mr. Mark Shephard, an attorney of the Court.

Average fees, 1845 to 1847 .	£ 904 3 2
Fees in 1848 . . .	3,537 11 10

Compensation 1846, 240*l.*

It will be recollected that the 7 & 8 Vict. c. 96, Lord Brougham's Act, abolished arrest in execution, where the sum recovered did not

exceed 20*l.*, exclusive of costs,—a sort of general gaol delivery act.

The question amongst the law reformers and political economists is, whether, compensations having been granted in respect of *diminished* fees by Lord Brougham's Act, in 1846, the *increase* to twofold the original amount of such fees will form the basis of compensation when the Courts are abolished?

There is one clear inference to be deduced from the decrease of business consequent on the act of 9th August, 1844, and the extraordinary increase of such business after the County Court Act, which came into operation in 1847,—that the public prefer a Court in which the business can be transacted by attorneys, without the personal attendance of the suitors. In the Palace Court, in actions under 20*l.*, the fees and emoluments of all the officers and practitioners are more than doubled. The return shows that in 1845, the number of writs issued was diminished from 2,186 to 1,526, and in 1848 the number increased to 6,535. The causes tried were in the same proportion: in 1844 there were 390; in 1845 reduced to 206; and in 1848 increased to 1,064.

BANKRUPT LAW CONSOLIDATION BILL.

Lord Brougham's Bill has just been printed, and we give immediately the substance of the Clauses, with an analysis of the Schedule. The whole project extends to 134 folio pages.

ARRANGEMENT OF CLAUSES.

I. Schedule to act annexed to be deemed part thereof, and the analysis, and all the chapters of such schedule, and all the articles, &c. thereof, and the appendices thereto, to be taken as enacted thereby.

II. Act to commence 11th day of October next, and all procedure in Bankruptcy, or for arrangement between any debtor and his creditors for concurrence of a certain number thereof, thereafter, to be under the provisions of this act; and all such procedure, and all fiats in bankruptcy, and petitions for such arrangement, depending on the commencement of this act, to be proceeded in and brought to a conclusion under this act; and in all matters or questions under or consequent upon any such procedure, fiat, or petition, the contents of this act exclusively to be the Statute Law relating to Bankruptcy and to such arrangements, but not to affect proceedings under subsisting fiats or petitions, or any right thereunder, and not to affect the provisions of "The Joint Stock Companies' Winding-up Act, 1848," or of the acts therein recited.

III. Judges to make rules, &c., for carrying act into execution, and as to duties to be performed by officers, and generally for regulating the practice of the Court where not provided for in this act; such rules, &c., to be approved by Lord Chancellor.

IV. Short title of the act, "The Bankrupt Law Consolidation Act, 1849."

V. Act not to extend to Scotland or Ireland, except where expressly mentioned.

VI. Act may be repealed, altered, or varied at any time within this Session.

ANALYSIS OF THE SCHEDULE.

CHAP. I. *Of the Court of Bankruptcy.*

Sect. 1. Of the Constitution of the Court, Judges, Districts, and Jurisdiction.
2. Of the Registrars.
3. Of the Accountant.
4. Of the Master.
5. Of the Official Assignees.
6. Of the Clerks to the Chief Registrar, Accountant, and Master.
7. Of the Messengers and Ushers.
8. Of Fees.
9. Of Salaries, Compensations, and Retiring Annuities, and of Travelling and other Expenses.
10. Of the Building Fund, and Housekeeper, and of the Buildings in which Courts are held in the Country.

CHAP. II. *Of Persons liable as Traders to be adjudged bankrupt; of certain Acts to be deemed Acts of Bankruptcy; and of the Power of the Court to summon Trader Debtors, and of Acts of Bankruptcy thereupon.*

Sect. 1. Of Persons liable as Traders to be adjudged Bankrupt.
2. Of certain Acts to be deemed Acts of Bankruptcy.
3. Of the Power of the Court to summon Trader Debtors, and of Acts of Bankruptcy thereupon.

CHAP. III. *Of Procedure to obtain Adjudication of Bankruptcy, and to secure the Property and Surrender of the Bankrupt, and of the choice of Assignees, their Rights and Duties; and of the Bankrupt's last Examination.*

Sect. 1. Of Procedure to obtain Adjudication of Bankruptcy, and to secure the Property and Surrender of the Bankrupt.
2. Of the Choice of Assignees; their Rights and Duties.
3. Of the last Examination.

CHAP. IV. *Of Proof of Debts and Payments in full; Audit; Dividend; Unclaimed Dividends; and of Allowances to the Bankrupt.*

Sect. 1. Of Proof of Debts and Payments in full.
2. Of the Audit.

Sect. 3. Of the Dividend.
4. Of Unclaimed Dividends.
5. Of Allowances to the Bankrupt.

CHAP. V. *Of the Certificate of Conformity.*

CHAP. VI. *Of Estates Tail and Copyholds.*

Sect. 1. Of Estates Tail.
2. Of Copyholds.

CHAP. VII. *Of Arrangements between Debtors and their Creditors, with the Concurrence of a certain Number thereof; and of Composition after Adjudication of Bankruptcy.*

Sect. 1. Of Arrangements between Debtors and their Creditors, with the Concurrence of a certain Number thereof.

CHAP. VIII. *Of the Distribution of the Estates of deceased Debtors in certain Cases.*

CHAP. IX. *Of Evidence.*

CHAP. X. *Of Solicitors, and Costs.*

Sect. 1. Of Solicitors.
2. Of Costs.

CHAP. XI. *Of Offences against the Law relating to Bankruptcy and to other Matters in this Act.*

CHAP. XII. *Definitions of Terms, and Explanations.*

APPENDICES, containing a List of Salaries and Forms of Proceeding, &c.

NOTICES OF NEW BOOKS.

Remarks on Treating and other Matters relating to the Election of Members of Parliament and on some recent Decisions of Committees of the House of Commons. By PERCIVAL ANDREE PICKERING, Esq., of the Inner Temple, Barrister-at-Law. London: James Ridgway. 1849. Pp. 145.

THE present state of the Law of Elections is doubtless of great importance to every constituency in the kingdom, and we agree with Mr. Pickering, that nothing can be more unsatisfactory than the law as it now stands, or the interpretation which has been given to it. The opening of a new Session, before another general election, affords a fitting occasion to examine this important branch of our Parliamentary and Statute Law. Mr. Pickering's work, therefore, is peculiarly well-timed, and we shall proceed to state its scope, and the remedy he suggests for the principal evils.

1. The question is ably considered, whether a candidate should in any case be liable to the penalty of *disqualification* as a member of parliament for acts done by an *agent without his authority* or consent.

2. Mr. Pickering then states and discusses the nature of the offence of "treating," under the statutes of 7 Wm. 3, c. 4, and 5 & 6 Vict. c. 102, s. 22, and enters fully into the construction put upon these statutes by Committees of the House of Commons, and the effect of such construction upon elections of members of parliament.

3. The author next states on what elections and for what period a disqualification for sitting in parliament is imposed by the statutes 7 Wm. 3, c. 4, and 5 & 6 Vict. c. 102, respectively, as a penalty for the offence of treating.

4. The important point is then fully considered—whether a committee appointed to try the validity of an election has the power of inquiring into the proceedings of a *former* election which may have taken place during the *same* parliament.

5. Some suggestions are made by Mr. Pickering for enabling a Committee to inquire into all the proceedings at the particular election referred to them, upon petition, both with regard to the conduct of the sitting member and that of the unsuccessful candidate, whether the seat be claimed for him or not.

6. Mr. Pickering then takes up the remarkable cases of the second Horsham Committee, in the last Session of Parliament, by the decision of which Lord Edward Howard now holds his seat; and that of the second Cheltenham Committee, during the same Session, under which Mr. Gardner was excluded.

7. The author next treats of the question, whether notice of disqualification in a candidate at an election should, in any case whatever, cause votes given for him after such notice to be thrown away, so as to enable a candidate with a minority of votes to sit as a representative in parliament.

8. Finally, Mr. Pickering makes many valuable suggestions for remedying the defects at present existing in the system by which controverted elections are now tried. As the judges are called in aid of the House of Lords, and as the Common Pleas is already the Court to which questions are submitted on appeal from the Revising Barristers, Mr. Pickering proposes, that after an investigation before the Committee of the facts alleged in a petition,—where the question turns upon a point of law, a special case should be sent to the Common Pleas for the opinion of not less than three judges of that Court; or that a Court be formed similar to that on Criminal Appeals, con-

sisting of a certain number of Judges of the Common Law Courts, excluding such of the Chiefs as are members of the Upper House. Mr. Pickering ably explains the probable working of this plan, and in order to remove an objection that would be raised against any abandonment of the privileges of the House, he proposes that the House itself should be at liberty to receive or reject the Report of the Committee, and render it conformable to the judgment of the Court. Various questions of law, arising out of the Cheltenham and Horsham cases, are stated by way of illustration of the advantages likely to result from the proposal. Questions of fact, it is suggested, would also be better investigated under the supervision of a competent judge. For this purpose it is recommended, that one of the Common Law Judges shall preside over a committee of five members, who would decide on the facts like a jury.

One of the objections to this plan may be, that the judges have already as much as, if not more than, they can satisfactorily despatch. If such be the case, let more judges be appointed; and on this or some other fitting occasion it may be proper to reconsider the arrangement of the various duties of the judges, and to consider whether three are not sufficient to sit in *Banco?*

The work comprises many interesting details on the petitions which have, from time to time, come before Election Committees, as well regarding disputed facts as questions of evidence. Many of the striking comments of distinguished members on both sides of the House are cited upon the principles of the present law, and valuable comments are made on the construction of the several statutes. The cases also which have been decided by the Courts of Law bearing on the subject are adverted to. Thus, on questions of notice of disqualification: *Rex* v. *Hawkins*, 10 East, 211; *Rex* v. *Monday*, Carp. 537; *Claridge* v. *Evelyn*, 5 B. & A. 81; *Rex* v. *Parry*, 14 East, 543; *Rex* v. *Bridge*, 1 M. & S. 76. On the holding of certain government offices: *North Berwick Case*, 2 Doug. 423; *Saltash Case*, 2 Doug. 441. As to refreshment to electors, *Ribbans* v. *Crickett*, 1 B. & P. 246; *Ward* v. *Nanney*, 3 C. & P., and particularly the considered judgment of the whole Court in *Hughes* v. *Marshall*, 2 C. & J. 118, 120-1; and *Thomas* v. *Edwards*, 2 M. & W. 215. The work also comprises references to all the material decisions contained in the reports of election cases.

MOOT POINTS.

CONSIDERATION FOR GUARANTEE.

I HAVE always considered that the law by which one person is not bound to pay the debt of another, even though he undertakes to do so, unless some consideration is expressed, was to be found in the Statute of Frauds, and I have frequently seen the fourth section of that statute referred to as the authority. On referring to that section, however, I am at a loss to see how such a construction can be put upon it. The words are, "That no action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person, unless the agreement on which such action shall be brought, or some *memorandum* or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised." Perhaps some of your readers can explain how it is that this statute is generally construed to extend to a *consideration*.

DOWER BEFORE 1834.

I believe it is generally considered, under the Dower Act, 3 & 4. W. 4, c. 105, that where the marriage took place *before* 1st January, 1834, that a simple declaration in a deed, prescribed by the 6th section of the act, would not be sufficient to bar the dower, and that in practice the old form of conveying to uses is also kept up. The words of the statute are, (6th section,)—"That a widow shall not be entitled to dower out of any land of her husband, when in the deed by which such land was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land." The last section provides, "That this act shall not extend to the *dower of any widow* who shall have been or shall be married on or before the 1st January, 1834, and shall not give to any will, deed, &c., executed before the 1st January, 1834, the effect of defeating any right to dower." It is laid down in the 2nd volume of Blackstone, by Stewart, as a settled thing, that where the marriage took place *before* 1st January, 1834, the conveyance to uses must still be adopted, but if the marriage took place *since* 1st January, 1834, a declaration would be sufficient. On attentively reading the above sections, however, I can come to no such conclusion; I cannot see that the statute warrants any such construction. The words "dower of any widow," &c., only seem to mean any dower which she might have been entitled to before the 1st January, 1834, and not the dower which she can *now* claim on the death of the husband. The latter part of the section seems to warrant this construction, as it does not give to any deed, &c., executed *before* the 1st January, 1834, the effect of defeating dower. I submit that the declaration mentioned in the 6th section is sufficient to bar

the dower in *all* cases whenever the marriage took place, and if I am wrong shall be glad to be set right.

G. F. I.

INTERMENT IN PAROCHIAL BURYING GROUNDS.

I shall be glad of the sentiments of your readers acquainted with the subject, whether the incumbent of a parish can legally refuse to bury an *inhabitant* of the parish, unless the fees demanded are previously paid.

I always imagined that an action could not be maintained to recover a compensation for a duty until the actual performance of the duty, but some of the clergy seem to think otherwise.

CIVIS, A.

LEGAL ANECDOTES.

DR. JOHNSON ON LONDON BARRISTERS.

DURING our visit at Oxford, the following conversation between Dr. Johnson and me, on the subject of my (a Scotch advocate) trying my fortune at the English Bar. Having asked whether a very extensive acquaintance in London, which was very valuable and of great advantage to a man *at large*, might not be prejudicial to a lawyer by preventing him from giving sufficient attention to his business.

Johnson said—"Sir, you will attend to business as business lays hold of you; when not actually employed you may see your friends as much as you do now, you may dine at a club every day, and sup with one of the members every night, and you may be as much in public places as one who has seen them all would wish to be; but *you must take care to attend constantly at Westminster Hall*, both to mind your business, as it is almost all learnt there, (*for nobody reads now!*) and to show that you want to have business; and you must not be too often seen in public places, that competitors may not have it to say, 'He is always at the playhouse or at Ranelagh,' and never to be found in his chambers; and, sir, there must be a kind of solemnity in the manner of a professional man: I have nothing particular to say to you on the subject; all this I should say to any one, and should have said to Lord Thurlow 20 years ago."

Mr. Boswell, however, justly thought this much too indulgent.—*Boswell's Life of Johnson, by Croker*, vol. 8, 312-13.

The great moralist was not here well acquainted with his subject. Lord Erskine, indeed, used to dwell very much on being constantly at Westminster Hall; and surely much may be gained by those who *well attend* to what is going on; and he was always in the Hall. But Erskine had been a pupil of George Wood's, and gained much knowledge there.

When Crompton, (the author of Crompton's Practice,) on leaving Wood's Chambers, used to go to his own chambers, Erskine (always gay) was going to ride to Hampstead; but Erskine was an able and eloquent pleader, and worked hard, his good temper and lively manners pleased every one; besides he had in Shepherd and other friends able advisers.

Lord Eldon, L. C., had a practice, if a young man knew little of his case, to try him with a variety of questions and expose him.

If a lawyer will be true to himself and work honestly, he will be rewarded.

S. P.

SUGGESTED IMPROVEMENTS.

EXAMINERS IN CHANCERY.

To the Editor of the Legal Observer.

SIR,—I suggest the expediency of appointing an Examiner to each of the four Courts of Equity. There is such an accumulation of business with the two Examiners, it is difficult to get an appointment so as to facilitate the progress of a suit. I know what I state to be a fact. And, therefore, I submit most respectfully, through your useful publication, to the consideration of the Lord Chancellor the appointment of two more Examiners, so that there should be always four Examiners, viz., one for each Court.

A. B.

ATTORNEYS TO BE ADMITTED.

Easter Term, 1849.

Queen's Bench.

Clerks' Names and Residences.	*To whom Articled, Assigned, &c.*
Allison, William, Louth; and Osnaburgh-street	William Grant Allison, Louth
Allen, William Simmons, 24, Northumberland-street, Strand; and Handeworth	William Morgan, Birmingham
Amys, John Dunham, Epping	Frederick Harrison, Bloomsbury-square; William Taylor Prichard, Newgate-street; William Belton Crealock, Regent-street, Waterloo-place
Armstrong, George, Cox Lodge, Northumberland	Edward Hall, Newcastle-upon-Tyne
Annesley, George, 10, Duke's-road, Euston-square; Bewdley; and South Molton-street	Robert Acton Pardoe, Bewdley
Allwood, Alfred, 3, Foxton-terrace, Barnsbury-park; Manchester; and Astley, near Leigh	John Makinson, Manchester

Bennet, William, jun., Manchester	William Bennet, Chapel-en-le-Frith; C. H. Wood, Manchester
Burton, John Francis, 14, Belgrave-street, Argyle-square; and Lindum-house, Lincoln	Frederick Burton, Lincoln; C. D. Scott, Furnival's inn
Bardwell, Everett, jun., 41, Carey-street, Lincoln's-inn; and Norwich	Everett Bradwell, sen., Norwich
Blackmore, William, New Inn; Montague-place, Islington; and Salisbury	John Lambert, Salisbury
Bamford, John, 11, Crombie's-row, Commercial-road, Stepney; and Ashbourn	John Fox, Ashbourn
Benson, Samuel Miles, 8, Manchester-street, Manchester-square	Thomas Moore, Yeovil; William Elliott Oliver, New Bridge-street
Brewster, John, Greatham; and Egglescliffe, Durham	Joseph Radcliffe Wilson, Stockton
Bickers, Thomas Linley, 56, George-street, Euston-square; and Tadcaster	James Upton, jun., Tadcaster; J. W. Maude, Tadcaster
Bone, Robert William, 12, Windsor-place, City-road; Devonport; Stoke; Claremont-square; and Calthorpe-street, Bernard-street, Great Coram-street	Allan Belfield Bone, Devonport
Boggie, John, Liverpool; Bridge-street, Blackfriars; Craven-street; Soley-terrace	Septimus Booker, Liverpool
Bastard, Richard, 102, Camden Villas, Camden-town; Exeter; 6, Palace New-road	Richard Every, Exeter
Blake, Edward, 28, Great College-street, Camden-town; 68, London-wall	Charles Blake, 68, London-wall
Burland, Thomas Blanchard, 5, Maddox-street, Hanover-square; and Beverley	John Myers, Beverley
Bullen, Robert Hockley, Bampton	James Rose, Bampton
Carter, William Henry, New Bridge-street, Blackfriars	William Elliott Oliver, New Bridge-street, Blackfriars
Challis, William, Basingstoke	James Brooks, Basingstoke
Corles, William, College-green, Worcester	Edward Corles, Worcester
Conworth, Job, jun., Alfred-street, Bedford-square; and East Retford, Notts	Thomas Bigsby, East Retford; John Mee, East Retford
Chandler, Thomas Whitty, Sherborne, Dorset; and Belgrave-street, King's-cross	Benjamin Chandler, jun., Sherborne
Crosley, Alexander, The Grove, Camberwell	James Phillips, 28, Laurence Pountney-lane
Crosby, Timothy, Norton, Durham	Thomas Henry Faber, Stockton
Croft, Richard Tompsett, Portland-terrace, Regent's-park	Charles Parsons, Temple-chambers
Calthrop, Thomas Dounie, Morden College, Blackheath	John Snaith Rymer, Whitehall-place
Chisholme, John, jun., 29, Edward-street, Hampstead-road	John Charles Hall, 64, Lincoln's-inn-fields
Cox, Henry, West Brixton	Charles Arthur Dodd, Billiter-street; Thomas Grueber, Billiter-street
Dryland, Robert Coster, East-street, Red-lion-square; and Speenhamland	George Gray, Newbury
Deakin, William, Weymouth-street, Portland-place; and Bahall-heath, Worcestershire	Thomas Hill, Birmingham
Davies, Robert, Tavistock-place; South-crescent; and Newton-le-Willows	John Urmson, Warrington
Dawson, William, Grove-lane, Camberwell	Benjamin Field, Lincoln's-inn-fields
Drage, William Henry, 1, Thavies-inn; and Liverpool-street	Zachary Brooke, New Boswell-court
Douglas, Robert, Tweedmouth	Edward Willoby, Berwick-on-Tweed
De Carteret, John Duniere, 10, Calthorpe-street; Featherstone-buildings; Highgate	J. E. Elworthy, Plymouth; D. A. Freeman, Old Jewry
Death, George W. H., jun, 2, Mitre-court	Samuel Waller, Cuckfield; Henry Hughes, 13, Clement's-inn
Dalton, John, jun., 11, Grafton-street-east, Fitzroy-square; Salford; Melton-street	Charles Gibson, Manchester; Wm. Gibson, Lincoln's-inn-fields
Drummond, Nelson, 26, Upper Park-street; Swinton-street; and Cockmouth	Robert Benson, Cockermouth
Evans, Richard, jun., 10, Cottage-place, City-road; and Wakefield-street	George Robinson, Wolverhampton
Freestone, Anthony S., Norwich; 45, Gower-place	E. Freestone, Norwich; R. Gamlen, Gray's-inn-sq.
Farrer, William James, 3, Gloucester-terrace, Regent's-park; Lincoln's-inn-fields	William Loxham Farrer, 66, Lincoln's-inn-fields
Fereday, Richard William, Birmingham	George Robinson, Wolverhampton
Frere, John, Stamford-brook, Hammersmith; and Whitchurch	Thomas Pain, Whitchurch
Goodman, Charles Samuel, 65, Swinton-street, Gray's-inn-road; and Berwick-on-Tweed	George Marshall, Berwick-on-Tweed

Gilbertson, William, Preston	Joseph Bray, Preston
Goodere, John Henry, 18, Devereux-court; River-street, Arundel-street; Upper Charles-street; Llandovery; and Fleet-street	Henry Lloyd Harries, Llandovery; David Lloyd Harries, Llandovery
Golding, Thomas Mingaye, 1, Brompton-cottage, Brompton-square	John Wardale King, Waltham-le-Willows
Gaunt, William Henry, Leeds	Matthew Gaunt, Leeds
Gardner, Sladden, 23, Remington-street, City-road	Robert Furley, Ashford
Hopgood, John, Clapham-common, Surrey; Little Ealing; and Bishopsgate-street,	James Hopgood, King William-street, Strand; and Lyall-street
Hargrave, Edward, The Grove, Blackheath	William Ghrimes Kell, Bedford-row
Hayward, William, Hisland, near Oswestry; Wharton-street; Wakefield-street	John Hayward, Hisland
Hall, Joseph, Tamworth; and Frederick's-place, Old Jewry	Felix John Hamel, Tamworth; John Shaw, Tamworth
Hall, John William, 36, East-street, Red Lion square; Newbury; Margaret-street	John Tanner, Speenhamland
Haynes, Robert, 2, Finchley-road, St. John's-wood	Alfred Robinson, 17, Orchard-street
Hanmer, Thomas, Bodnod-hall, Denbigh; 18, Wimpole-street, Cavendish-square	William Wybergh How, Shrewsbury; Rowland Nevitt Bennett, Lincoln's-inn
Helder, Augustus, 38, Great James-street; Whitehaven	Richard Armistead, Whitehaven
Hallett, Frederick Hughes, 7, Featherstone-buildings; Ashford	Robert Furley, Ashford
Holt, William, 3, Percy-circus, Pentonville; Great Yarmouth	George Wells Holt, Great Yarmouth
Hartley, William, 35, Lincoln's-inn-fields; Settle; and Compton-street	Joseph Heath, Settle; George Hartley, Settle
Hearn, William, John-street, Bedford-row	Thomas Hearn, Buckingham; Samuel Berridge, Leicester; Clement Tudway, John-street, Bedford-row; G. L. P. Eyre, John-st., Bedford-row
Hooker, Ayerst, 6, Strahan-terrace, Liverpool-road; Maidstone	Knowles King, Maidstone
Harwood, Joseph, 24, Percy-street, Bedford-square	Daniel Davies, Warwick-street
Hampton, Samuel, Manchester	James Chapman, Manchester
Husband, J. E. Colvile, 23, Lower Calthorpe-street; Mitre-court-chambers, Middle Temple-lane; Moreton-house, near Oswestry; and Torquay	Edwin Wyatt, The Mount, St. Asaph; Charles John Bloxam, Lincoln's-inn-fields
How, Richard Nesbit, Upper Seymour-street; Tiverton	John Shuckburgh How, Tiverton; Thomas Edgcombe Parson, Lincoln's-inn-fields
Hawkes, Jonathan Blundell, 7, Halsey-terrace, Chelsea; Clifton; and Caen, France	Francis Ridout Ward, Bristol
Hudson, Alfred Ricketts, 45, Stanhope-street; Gray's-inn-square; Wick, near Pershore	Edmund Wells Oldaker, Stratford-on-Avon; Edwin Bell, Pershore
Josselyn, Charles, Wells-street, Gray's-inn-road; and Copdock	George Lucas, Great Yarmouth; Charles Rankes, Gray's-inn
Jones, John, 6, Wells-street, Gray's-inn-road; and Swansea	John Trevillian Jenkins, Swansea
Jewitt, Frederic Hardy, 45, Lime-street, East-cheap; West Ham	James Watson Jewitt, Lime-street
Iveson, Francis, 1, Cottage-place, Brompton-square; Liverpool-street; Brighton	James Baker Bainton, Beverley
Johnson, John Henry, 7, Princes-street, Cavendish-square; Lincoln's-inn-fields; Portland-place, North Clapham-road	Thomas Harrison, Kendal
Kingdon, Paul, Exeter	Samuel Duckinfield Darbishire, Manchester; Edward Hunt Roberts, Exeter
Longman, Thomas Coster, 8, Westbourne-place, Eaton-square	James Percy Phillips, 10, St. Swithin's-lane
Last, Charles John, 19, Hanover-cottages, Park-road; Bedford	Alexander Sharman, Bedford
Morris, John, Ashby-street; Northampton-square; and Warwick-court	Griffiths Jones Williams, Dolgelly
Morrison, George Carter, Granville-square, Pentonville; and Dorking	Alexander Hart, Dorking; Charles James Abbott, New-inn
Mence, William, jun., Frederick's-place, Old Jewry; and Worcester	John Parker, Worcester
Miller, Francis, Frederick's-place, Old Jewry; and Bath	Henry John Mant, Bath; Frederick Maples, Frederick's-place, Old Jewry
Murray, Archibald, 28, Porchester-terrace, Bayswater	John Murray, Whitehall-place

*M'Alpin, Daniel, Blackwell, near Carlisle; 10, County-terrace, Cumberland-new-road . .	Simon Ewart, Carlisle; George Mounsey, Carlisle
Mounsey, Ewart Simon, 6, Copthall-court . .	James Mounsey, Carlisle; George Mounsey Gray, Staple-inn
Nedham, Thomas Stanley, 16, Compton-street east; Leicester; and Great James-street .	Halford Adcock, Leicester; Henry Parker, Bedford-row
Parsons, Arthur, 29, Henrietta-street, Covent-garden; and Lenton	Samuel Parsons, Nottingham; John Brewster, Nottingham

* This is an application for admission as well in Chancery as Common Law,—an unnecessary notice for admission in one Court entitles the party to admission in the other without notice.

[*The remainder of this List will be given in our next Number.*]

NOTES OF THE WEEK.

TRIAL BY JURY *v.* DUELLING.

We have noticed, with much satisfaction, in the daily journals, the report of a recent case, (*Andrew* v. *King*,) in which very exemplary damages were given a plaintiff in an action of libel. The expressions complained of were of a highly insulting and injurious character, and both parties occupied the station of gentlemen. We were glad to observe the ground taken by the advocate, (Mr. *Warren*,) who strongly impressed the jury with the propriety of showing gentlemen that "the peaceful tribunal of a jury afforded a perfectly efficient protection to the assailed honour and character of gentlemen," and that they "need not have recourse to the stern and bloody ordeal to which the code of honour, so called, would remit them." Another forcible and just observation was made by the learned counsel, which probably had great weight with the jury,—"That, under such circumstances as were before them, exemplary damages should be given, since a verdict for a trifling amount would serve only to dip the arrow of calumny in venom, and supply a source of exultation to the slanderer." Five hundred pounds, the amount of the verdict, is undoubtedly a heavy penalty to pay for indulging in offensive language; but the fact evidences a wholesome principle, and we hope that the example of this plaintiff will be followed by those who may be similarly aggrieved.

GENERAL REGISTRY OF DEEDS.

This subject has been introduced into the House of Commons in a very jocular manner, by Mr. Henry Drummond. Lord Campbell was wont to talk of "the sons of Zeruiah," as having something to do with the question, at least practically; but Mr. Drummond throws all lawyers overboard. They may be useful, he thinks, in executing the laws, but they have no business to meddle in making them! So far as the *pecuniary* interest of the profession is concerned, its members would be wise as serpents if they never interfered in legislation, but confined themselves to the never-ending task of interpreting all the possible meanings of the laws, made by personages who know little or nothing, either of what the law is, or ought to be, for the purpose of effecting the just objects and true interests of the community. The profession, however, candidly admit all real defects, and willingly assist in useful alterations; but Mr. Drummond will find that it is no laughing matter to alter the Law of Real Property. We wait for the honourable member's bill, which has not yet been printed.

PROPOSED NEW QUEEN'S COUNSEL.

There is much talk in the professional circles on the delay of the Lord Chancellor in determining the claims for silk gowns. In the old times, these offers of assisting her or his Majesty were "few and far between." The overcrowded state of this high calling impedes the progress of many whose learning and talents entitle them to early distinction. We marvel not at the impatience of those whose eloquence remains unheard.

APPLICATIONS AGAINST ATTORNEYS.

It is a grievous thing to observe the number of applications made against attorneys during the last Term. There were not only two cases brought forward by the Incorporated Law Society to strike attorneys off the Roll, and some opposed re-admissions; but two others were made by the aggrieved parties at their own expense. We trust that these examples will prevent future delinquencies, and that the last term has presented the maximum of offence.

It is but just that we should recollect, after all, that these are but few out of a body of 10,000 persons, that they are exposed to great temptations, and that the pressure of adverse circumstances has been very extraordinary during the past year.

RECENT DECISIONS IN THE SUPERIOR COURTS,

AND SHORT NOTES OF CASES.

Lord Chancellor.

Warde v. *Warde.* Jan. 13, 17, 20, 1849.

HUSBAND AND WIFE.—CUSTODY OF INFANTS.

The custody of children decreed to the mother, where the conduct of the father was such as to affect their future welfare.

The costs of the appeal to be borne equally where the decision of the Court below is reversed.

THIS was an appeal from the Vice-Chancellor of England, who had directed that the three elder children were to remain in the custody of the father, and the two younger with the mother. It appeared that Mrs. Warde shortly before had discovered the irregularity and immorality of her husband's life, and had obtained a divorce from the Ecclesiastical Court, and alimony to the amount of 1,200*l.* a year. New affidavits were now filed, showing the grossest immorality of the husband, and the consequent evil effect on the children's morals; and also stating that he intended to remove the children out of the jurisdiction of the Court, and an order had been granted by his lordship restraining such removal, pending the appeal. Mr. Warde had admitted, in a letter to his brother-in-law, the culpability of his conduct.

Stuart, *Rolt*, and *Dickenson* for the appellant; *Giffard* for the respondent.

The *Lord Chancellor*, after referring to the circumstances of the case, said that it was only necessary to look at the parents' conduct as it would affect the children's future welfare, without regarding it as between themselves. Although it had been stated that the ordinary accomplishments were imparted by competent masters, there was no allegation of religious or moral education. Under these circumstances, the custody of the eldest daughter, who was 10 years of age, must be confided to the mother. As to the other two children, it was preferable that they should not be separated, and therefore, without expressing any opinion as to the unfitness of the father to the custody of the son, the three children must be given up to their mother, or to such person as she should appoint. The costs of the appeal would be borne by each party, Mr. Warde being entitled to support the order of the Court below.

Attorney-General v. *Prosser.* Jan. 19, 20, 23, 1849.

VALIDITY OF LETTERS PATENT.

The Court will not interfere with the discretion of the Attorney-General on the part of the Crown, in regard to security of costs for the prosecution of a sci. fa. to try the validity of a patent.

THE defendant had obtained letters patent for a new method of making iron tubing, and afterwards, together with Cutler, a patent in Scotland. Cutler and Prosser not agreeing, a suit (which was still pending) was instituted in Scotland. A *sci. fa.* was then sued out to test the validily of the patent, by Irving Van Wart, who resided in America. An application for a *nolle prosequi* had been made to the Attorney-General, and an objection raised that the bond of security for costs was insufficient. The Attorney-General, however, declined to interfere, as the parties were not agreed to take his decision as final. The Master of the Rolls also held that he had no jurisdiction and could not interfere. (See *ante*, page 189.

The *Lord Chancellor* said, that there was no ground for the application to this Court. It was urged that the informant was unfit to be entrusted with the conduct of this suit, but this Court had nothing to do with that question: it rested solely with the Attorney-General. With respect to the alleged insufficiency of the security, that could not affect the conduct of the suit, nor the merits at issue between the parties. The Attorney-General was the real prosecutor, and Mr. Van Wart only nominally. Security for costs had been required by the Attorney-General according to his view of the requirements of the case, and this subject was entirely within his discretion, and this Court would not interfere. The practice of taking security was of novel practice, and had originated with the legal advisers of the Crown. The decision of the Master of the Rolls would, therefore, be affirmed, and the petition dismissed.

Feb. 8.—*His Royal Highness Prince Albert* v. *Strange*—Appeal dismissed with costs—Injunction continued.

— 8.—*In re Dyce Sombre*—Stand over.

— 9.—*In re Gurney and Nash*—Appeal dismissed with costs.

— 10.—*Wilby* v. *South Eastern Railway Company*—Appeal dismissed—Injunction dissolved.

— 10.—*Sharp* v. *Taylor*—Appeal dismissed—Decree for an account.

— 10, 14.—*Allfrey* v. *Allfrey*—Part heard.

Rolls Court.

Moore v. *Jones.* Jan. 25, 1849.

INJUNCTION.—FELLING TIMBER.

An injunction granted, upon an affidavit stating that waste was about to be committed, to restrain the felling of timber.

THIS was a motion for a special injunction to restrain the defendant, one William Jones, from cutting down trees. It appeared, however, from the affidavits in support of the application, that the waste had been already committed, and it was not stated that any further waste was anticipated. The motion stood over, and in the course of the day a further affidavit was filed showing that the defendant was about to cut down certain ornamental trees and other timber.

Bailey in support of the application.

The *Master of the Rolls* granted the injunction as prayed.

Sanderson v. *The Cockermouth and Workington Railway Company.* Jan. 24, 26, 27, 1849.

RAILWAY AGREEMENT.—SPECIFIC PERFORMANCE.

The Court will direct the specific performance of an agreement by providing certain convenient ways from one portion of land to another, without erecting a bridge.

THIS suit was instituted to compel specific performance of a contract made by a railway company in March, 1846, whereby they agreed to take a portion of the plaintiff's close through which the railway was to run, and to make all such roads, ways, and slips for cattle as might be necessary. The railway cut off the river Derwent, which bounded the close on the north, and had been used for the cattle and pasture, from the farm-house. The company had made a level crossing over the railway, with a gradient of 1 in 14, and descent into the creep for cattle near it much greater. To use the crossing and creep it was necessary to cross a piece of ground that belonged to the railway company. The crossing was alleged to be dangerous, and the creep inconvenient, the descent being too steep and liable to be flooded. The company had offered to refer the matter to arbitration, and to give the plaintiff 100*l.* in lieu of the bridge which he required to be built across the railway at the eastern end of the close, but these offers were declined.

Roupell for the plaintiff; *Turner* and *Malins* contrà.

The *Master of the Rolls*, upon a question whether this Court had jurisdiction to interfere, as a special tribunal had been provided by the Lands' Clauses Consolidation Act to determine questions of convenient communications, held that there was such an agreement in this case as the Court had jurisdiction to enforce. The difficulty was, how the contract was to be performed; if the bridge were to be built, the gradient would be much greater than that to the level crossing, and moreover, a mound would have to be made on the plaintiff's close. But although a level crossing were dangerous, yet if the communication thereto were through lands in which the plaintiff had a right of way, the company could not be compelled to erect a bridge. But such was not the case; the plaintiff had no right of way to the level crossing. The descent to the cattle steep was, it appeared, much greater than to the level crossing, and was very dangerous. If the defendants would make the descent to the steep on the same gradient as the approach to the level crossing, giving the plaintiff a right of way to the same, no further order would be made, and persons might be appointed to see that this was properly executed.

Shallcrop v. *Wright.* Jan. 24, 25, 30, 1849.

EVIDENCE IN OPPOSITION TO FURTHER DISCHARGE.—PRACTICE.

Leave given to plaintiff to carry in further evidence in opposition to a further discharge taken in by consent after the Master's warrant to prepare the report had issued, although the defendant refused to consent thereto.

A WARRANT had been issued in this cause by the Master to prepare his report under the decree, when the defendant, who was sued as executor of one Francis Brookes, entered into an arrangement with the plaintiff—the practice requiring the consent of the plaintiff to such proceeding—to carry in a further discharge without prejudice to the warrant. The defendant accordingly carried in such further discharge, and the plaintiff wished to give further evidence in opposition, but which the Master refused to admit, except by consent. The defendant refused, and this petition was now presented for leave to carry in such further evidence.

Turner and *Elderton* for the petitioner; *Roupell* and *C. A. Calvert*, contrà.

The *Master of the Rolls* held that, under the special circumstances of the case, the plaintiff might carry in his further evidence, notwithstanding the warrant to prepare the report had issued, as otherwise the Master's report as to the discharge could only be made on *exparte* evidence.

Feb. 8, 9.—*Bridson* v. *Benecke and others*—Stand over—In the meantime action to be brought.

— 9.—*Attorney-General* v. *The Master, &c., of King's College, Cambridge, Same* v. *Shield*—*Cur. ad. vult.*

— 10.—*Mitchell* v. *Koecker*—Demurrer to supplemental bill allowed.

— 10.—*Coragio* v. *Lee, Syms* v. *Lee*—Petition dismissed with costs.

— 10.—*Norfolk Railway Company* v. *Wodehouse and others*—Reference to the Master as to validity of agreement for lease—In the meantime injunction continued.

Feb. 10. — *Wharton* v. *Electric Telegraph Company*—Stand over.

Vice-Chancellor of England.

Lay v. *Hortridge*, Jan. 13, 1849.

INJUNCTION.—WATERMILL.

Where a plaintiff has not applied for an injunction within a reasonable time after the occurrence of the act complained of, the the Court will not interfere in a summary way by injunction, but will leave him to his remedy at law.

THE plaintiff, who was occupier of a mill near Sittingbourne, applied for an injunction to restrain the defendant from interference with a watercourse, from which the plaintiff's mill was supplied. The defendant had some time since erected a wall across part of the stream, and had caused an obstruction, whereby serious damage and injury accrued to the plaintiff in the working of his mill.

Bethell and *Shebbeare* for the injunction.

Stuart and *G. Collins* contrà.

The *Vice-Chancellor*, said the Court would not interfere in a summary way by injunction, where a length of time had elapsed since the occurrence of the injury complained of, and cited *Pickford* v. *The Grand Junction Railway Company*, 3 Car. & Ol. 538. The motion would therefore stand over, with leave to the plaintiff to bring such action at common law as might be deemed advisable.

Boothby v. *Boothby*. Jan. 16, 1849.

SALE OF REVERSIONARY INTEREST. ALLEGED FRAUD.

This Court will not interfere to set aside the sale of a reversionary interest, unless the evidence adduced supports the case made by the bill.

WM. BOOTHBY devised by his will, dated Dec. 22, 1821, certain houses and land at Kirkmington, to his wife for life, and after her decease to his son Christopher for life, and at his said son's death to his (the testator's) eldest son, and other sons in tail male; and in default of issue male or female of his said son, then the testator devised the property to his first and other daughters, and in default of such issue, to his own right heirs, charging the estate with annuities of 20*l.* to each of his children. Several of the annuities were, however, by a codicil made Dec. 20, 1822, revoked, and the interest of the sums given in lieu thereof. In June 1831, the testator died, and his wife did not long survive. Christopher Boothby entered under the devise and remained in possession till June 1843, when he executed a deed which purported to be made between William Boothby of the first part, (the testator's eldest son,) Christopher Boothby of the second part, and Richard Fulham of the third part, and which, after reciting the will of the testator, the death of the widow, and that the devisee, Christopher Boothby, had been in possession of the estate, and had no issue, and that William Bothby was the eldest son and presumptive right heir of the testator, then witnessed that Christopher, in consideration of the annuity of 20*l.* as directed by the will, contracted to purchase the reversion. Christopher Boothby died in April 1844, and devised by his will all his property to his wife Anne. Wm. Boothby then died, and devised his property subject to the annuity to the plaintiffs, who proved the will. They then filed this bill, praying that the deed of June 1843 might be set aside on the ground that it was obtained while Wm. Boothby was intoxicated, and upon untrue representation, and without due perusal thereof, that he could not write without having his hand guided, and that there was no equivalent consideration: the value of the property being 800*l.*

Bethell and *Nalder* for the plaintiffs; *J. Parker* and *Elmsley* for the defendant.

The *Vice-Chancellor* held that the evidence did not support the case alledged by the bill so as to justify the Court in interfering. The bill must, therefore, be dismissed with costs.

Feb. 8.—*Dobson* v. *Lyall*—The costs to be paid by each party.

— 8.—*Coleman* v. *Mellersh and another*—Decree for a general account.

— 8, 9.—*Beardmer* v. *London and North-Western Railway Company* — Injunction restraining railway from making works granted.

— 9.—*In re Norman's Charity*—Application to appoint charity trustee without reference to the Master refused.

— 10, 12.—*Sharp* v. *Arbuthnot*—Injunction restraining defendant from bringing action on bill—Order for payment of the amount into Court refused.

— 13.—*Gray* v. *Gray*—Part heard.

— 14.—*Tomlinson* v. *Troughton* — Minutes of decree settled with consent.

Vice-Chancellor Knight Bruce.

Yetts and March v. *The Norfolk Railway Company*. Jan. 15, 1849.

DEMURRER FOR WANT OF EQUITY.

Circumstances in which the new shareholders of a company were held not entitled to maintain a suit.

THE plaintiffs, Yetts and J. March, filed this bill on behalf of themselves and all the holders of the new 20*l.* shares in this company, except seven. The company was originally called "The Yarmouth and Norwich," and afterwards "The Norwich and Brandon," and by the act of amalgamation, "The Norfolk Railway Company." The company had contracted liabilities on mortgages and bonds to the amount of

197,000*l.* payable in the respective years of 1849, 1850, 1851. And on the 23rd Feb. 1847, at the half-yearly meeting, a resolution was passed, empowering the directors to raise additional capital to meet the debts by creating new shares of 20*l.* each. An immediate deposit of 5*l.* per share was to be made, and the remainder were to be called for as the mortgages or bonds became due. The plaintiff Yetts had paid 195*l.* deposits on 39 shares purchased by him, and March had paid 100*l.*, and similar payments were made by others, in the belief that the money would be applied according to the resolution. A call had been made in June 1848, which had produced, together with the deposits, a sum of 60,715*l.* on the 8,719 shares allotted under the aforesaid resolution, which sum was alleged to be more than sufficient to meet the moneys due. The company then entered into an agreement which was afterwards approved at the general meeting held on May 2, 1848, to lease the line to the Eastern Counties Railway Company, who undertook, on condition of having a lien on all the property so leased, to pay interest on the borrowed capital and guaranteed shares, and a dividend to the same amount as should be paid on their own shares. The railway so leased was to be worked, and the debts and liabilities liquidated under the direction of a joint committee. The directors of the Norfolk Railway Company were to obtain an act to let the tolls, but no such act had been obtained. A further call of 5*l.* a share was made on the 16th Nov. to be paid on the 15th Dec. 1848, for the discharge of liabilities then pressing on the company.

Bacon and *Speed* appeared for the company in support of a demurrer to the bill for want of equity: citing *Foss* v. *Harbottle*, 2 Hare, 461; *Mozley* v. *Alston*, 1 Phill. 790.

Wigram and *Campbell*, contrà.

The *Vice-Chancellor* held that the demurrer for want of equity in the plaintiffs was fatal to the bill. The proposed application of the additional capital was not an injury to any one individual shareholder, but to the corporation, and it was for the company, including the old as well as the new shareholders to sue the directors.

Demurrer allowed.

Exparte Hawthorn, in re the North of England Joint Stock Banking Company. Jan. 16, 1849.

CONTRIBUTORY TO JOINT STOCK BANKING COMPANY.

The Master had found in his report that the exceptant in this cause was a contributory of the company under 5th head of sect. 3, of the 10 and 11 Vict. c. 45, "as a former member of the same." The party had ceased to be a shareholder, but not so long ago as the three years prescribed for the continuance of liabilities of former shareholders by the 7 Geo. 4, c. 46, s 13.

Russell and *Bates* for the exceptant: *Bacon*, *Lloyd*, and *Headlam*, contrà.

The *Vice-Chancellor* held that the decision of the Master was right, and dismissed the exceptions.

Exparte Angus, In re the North of England Joint Stock Banking Company. Jan. 16, 1849.

Exceptions to the Master's report inserting a husband in the list of contributories in respect of shares purchased by the wife out of her separate estate, allowed.

THIS came on on exceptions to the Master's report, who had inserted in the list of "contributories" the husband of a shareholder, who had purchased shares out of her separate estate.

Russell and *Terrell* in support of the exceptions. *Bacon*, *Lloyd*, and *Headlam*, contrà.

The *Vice-Chancellor* held, that the husband was wrongly inserted in the list of contributories, the company knowing when the purchase was made of the nature of the transaction, although the husband had always received the dividends on his wife's behalf.

Feb. 8.—*Lord* v. *Copper Miners' Company*—Stand over, the plaintiff undertaking to prosecute the appeal on the demurrer as soon as possible.

— 8.—*White* v. *Everest*—Order by consent to appoint a receiver.

— 9.—*In re Brighton, Lewes, and Tonbridge Wells Direct Railway Company*, (*Hallett's line*,)—Order dissolving company and winding up its affairs.

— 9.—*In re Patent Elastic Pavement and Kamptulicon Company* — Order winding up the company.

— 9.—*Exparte Fisher, in re Fisher*—Application refused.

— 10.—*Cooper* v. *Bloxam*—Injunction by interim order restraining defendant and others from parting with bills of exchange—Motion to be heard on the 17th.

— 10.—*Wynne* v. *Price*—Decree for plaintiff declaring that defendant was bound to be registered as proprietor of shares, pay the calls and indemnify plaintiff.

—12.—*Exparte Norris, In re Biddulph, Wright & Co.*—Stand over.

— 13.—*Duncan* v. *Luntley, In re Abney Park Cemetery Company*—Demurrer allowed—Leave to amend—Costs reserved.

Vice-Chancellor Wigram.

In re Gaffee's Settlement. Jan. 15, 19, 1849.

TRUSTEES' RELIEF ACT.—SEPARATE USE.—MARRIED WOMEN.

Annuities charged on the life interest of a married woman payable according to priority.

THIS was a petition presented for the payment of the dividends of two sums of 5,590*l.* consols, and 286*l.*, three and a quarter per cent. stock to the tenant for life, (a married lady,) for her separate use, and which fund had been paid into Court under the Trustees' Re-

lief Act, 10 & 11 Vict. c. 96. It appeared that the petitioner being a minor, married in 1811 Benjamin Gaffee, and that, although entitled to considerable property under her father's will, had no settlement thereof. There was, however, a post-nuptial agreement, whereby the sum of 1,283*l.* 6*s.* 8*d.* was paid to the husband, and the residue settled on the wife by a deed executed 29th May, 1811, under which the trustees were empowered to pay the rents and profits of the trust property to such persons as the petitioner should from time to time appoint, but not by anticipation. In default of such appointment, the income was to be paid to the wife's separate use, notwithstanding her coverture, and not subjected to the debts and liabilities of Benjamin Gaffee, and at her decease to her husband for life, with remainder to the children of the marriage, according to appointment, and in default of such appointment, to the sons on attaining 21, and the daughters at the like age or marriage. If there were no issue of the marriage, and the wife should survive, the whole trust property was to be paid to her; but if the husband survived, the property was, subject to the wife's appointments, to revert to the next of kin according to the statute. The wife survived her husband, having left issue of the marriage, and afterwards married Adam Browne, who is still living. The petitioner and Browne charged her interest in the property with three annuities.

Wood and *Parsons* for the petitioner; the *Solicitor-General* and *Bacon* for the annuitants; *Walker* for the trustees.

Cur. ad. vult.

The *Vice-Chancellor*, on the 19th January, after stating the circumstances of the case, and referring to the cases of *Tullett* v. *Armstrong*, 1 Beav. 1; 4 Myl. & C. 377, 390; and *Scarborough* v. *Borman*, 1 Beav. 34; 4 Myl. & C. 378; said that the only question was, whether the trust for the separate use of the petitioner with the proviso against anticipation, was, on the construction of the settlement of May, 1811, confined to the then existing coverture, or whether it extended to any future coverture. The deed was most inartificially expressed; the first direction was to pay the income to such person as she should from time to time appoint, and which, taken with the clause against anticipation, must mean that the appointment was to take place after the income became due. There was no definite time as to how long the clause against anticipation was to continue. Then there was the question whether the direction that, in default of appointment, the trustees were to pay the income to the petitioner's separate use, "notwithstanding her coverture," did not apply to the then existing coverture. If this were not so, what would be the meaning of the words that the wife's income was not to be subject to *the debts and engagements of Benjamin Gaffee?* If the direction to pay to the separate use of the wife be confined to her then existing coverture, would it not follow that the clause against anticipation was likewise so limited? The one direction must be co-extensive with the other. The circumstance that there was no express gift to the wife for life in the event of her surviving her husband, was met by the fact that the property belonged originally to the wife, and by the implication so clearly shown on the face of the settlement, and this omission would be no reason for altering the express estate for life. The language, therefore, of the settlement has reference to the existing marriage, with the exception of the clause of appointing from time to time, which is indefinite. This opinion agrees with the decision of the Vice-Chancellor of England in *Knight* v. *Knight*, 6 Sim. 121; *Benson* v. *Benson*, 6 Sim. 126. The annuitants will be entitled to their annuities according to their priorities, subject to the trustees' costs; the petitioner to pay the costs of the annuitants.

Feb. 8, 9.—*Castelli* v. *Cook*—Injunction dissolved with costs.

— 9.—*Webster* v. *Bray*—Reference to the Master.

— 10.—*Hart* v. *Tulk*—*Cur. ad. vult.*

— 13.—*Smith* v. *Capron*—Demurrer overruled.

— 13.—*Middleton* v. *Reay*—Exceptions to Master's report overruled.

— 14.—*Fuller* v. *Benett*—Exceptions to Master's report overruled.

Judicial Committee of the Privy Council.

Feb. 12.—*Browning* v. *Budd* — Decision of the Prerogative Court reversed—The costs to be paid out of the estate.

— 12.—*In re Hardy's Patent* — Judgment deferred.

— 13.—*Craig* v. *Farnall* — Application to examine witnesses *vivâ voce* refused with costs.

Queen's Bench.

(Before the Four Judges.)

The Queen v. *Buchanan.* Trinity Term, 1847.

ATTORNEY'S COSTS.

A society of attorneys prosecuted an individual under 6 & 7 Vict. c. 73, s. 2, for practising as an attorney, he not being one. He removed the indictment by certiorari, but was convicted. The prosecutors applied for costs under the 5th W. & M, c. 11, s. 3: Held, (Coleridge, J., dissentiente,) that they were, within the words of that statute, parties "grieved or injured," and were therefore entitled to costs.

The defendant had been indicted and found guilty, under the 6 & 7 Vict. c. 73, s. 2, of practising as an attorney without being duly qualified.[a] The offence was committed at Chatham, and the indictment was removed into this Court by certiorari. The prosecution was instituted by a number of attorneys practising in the county of Kent, called the Kent Law So-

[a] See a report of the case, 32 L. O. p. 155.

ciety, the object of which society was to promote just and honourable conduct in the profession, and to protect the profession from unqualified practitioners. A side-bar rule was obtained for the payment of the costs of the prosecution. A rule *nisi* was afterwards obtained to set aside that rule, on the ground that the prosecutors were not entitled to the costs of the prosecution, they not coming within the description of "a party grieved or injured," within the meaning of the 5 W. & M. c. 11, s. 3.

In Trinity Term, 1847, Sir *F. Thesiger* and Mr. *Hurlstone* showed cause.

The statute uses the words "party grieved or injured," from which it would appear that the legislature contemplated cases where a party might be grieved without suffering any pecuniary loss. It cannot be alleged that any one of the prosecutors was directly injured by the act of the defendant, but it is an interference with their just rights and privileges as attorneys, and in that respect they are parties grieved within the meaning of the statute. It is analogous to the case of Commoners or the Dippers at Tonbridge Wells. In *Rex* v. *Taunton, St. Mary*,[b] it was held that several persons, prosecutors of an indictment for the non-repair of a highway, were parties grieved, because, by reason of their local situation, they suffered a personal grievance beyond that which affected the public at large. In *Rex* v. *Dewsnap*,[c] the parties dwelling near a steam-engine were held to be parties grieved, because there was a special grievance arising out of the common cause of injury. They also cited *Rex* v. *Pemberton*;[d] *Rex* v. *Williamson*;[e] *Regina* v. *Dobson*.[f]

Mr. *Horn* and Mr. *Pashley*, contrà. It was said by *Buller*, J., in *Rex* v. *Sharpness*,[g] that the Court has always construed this act as strictly as possible. The rule to be collected from that case is, that there must be some special private injury to the prosecutors, arising from the offence committed, independent of the grievance they may sustain in common, either with a particular class, or with the public at large. One test often applied is, whether an action would lie, and it seems admitted that the prosecutors would not have had any right of action against the defendant. The prosecutors, being attorneys living near the place where the offence was committed, cannot be said to have suffered any direct and immediate injury, it can only be consequential, as in *Rex* v. *The Justices of Middlesex*,[h] where Mr. Justice *Littledale*, in giving judgment said, that the statute meant one that was immediately aggrieved, and not one who was only consequentially aggrieved. They also cited *Rex* v. *Incledon*;[i] *Rex* v. *Dewhurst*;[k] *Rex* v. *Edwards*;[l] and *Rex* v. *Cooke*.[m]

Cur. ad. vult.

[b] 3 M. & S. 465. [c] 16 East, 194.
[d] 2 Burr. 1035. [e] 7 T. R. 32.
[f] 31 L. O. 200. [g] 2 T. R. 47.
[h] 3 Barn. & Adol. 938. [i] 1 M. & S. 268.
[k] 5 Barn. & Adol. 405. [l] Ib. note, 407.
[m] 1 Man. & Ry. 526.

Lord *Denman*, now, (Feb. 10, 1849,) said, the prosecutors in this case obtained a side-bar rule for the Master to review his taxation of costs, he not having allowed the prosecutors their costs. This was a prosecution for disobedience to an act of parliament, by a person practising as an attorney, he not being one. The prosecution was instituted by an association in the county of Kent. The case was argued before Justices *Patteson*, *Coleridge*, *Erle*, and myself, and the question was whether these parties could be called parties "grieved or injured," within the meaning of the statute. The majority of us thought that these prosecutors were parties "grieved or injured" within the meaning of the statute, and that as such they ought to have their costs. Mr. Justice *Coleridge* dissented from the rest, thinking the uncertainty as to the application of the words of the statute was too great to allow him to apply them in a case of this kind, and also that the grievance or injury to any one of the prosecutors, or to all of them, was too minute for the law to notice. Under these circumstances the rule will be according to the opinion of the majority of the Court, and the Master will review his taxation.

Rule accordingly.

Reg. v. *Barton.* Jan. 22, 1849.

RULE TO QUASH CONVICTION. — CROWN PAPER.

An application to advance a case in the Crown Paper, to enable a party to avoid the operation of the Limitation of Action, created by the 11 *&* 12 *Vict. c.* 44, *can only be granted, if made promptly.*

Semble, *that notice of action may be given to a magistrate before the conviction, for which the action is brought, is quashed.*

THE act 11 & 12 Vict. c. 44, s. 2, provides, that no action shall be brought against a magistrate for anything done under a conviction, "until after such conviction shall have been quashed, either upon appeal or upon application to her Majesty's Court of Queen's Bench;" and the 8th section enacts, that "no action shall be brought against any justice of the peace, for anything done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of shall have been committed." In this case the defendant had been thrice convicted, namely, on the 17th October, the 31st Oct., and the 13th Nov., of selling apples and walnuts on the Lord's day; and rules had been obtained to quash the convictions, which were removed by certiorari, and set down for hearing in the Crown Paper, in the ordinary course.

Mr. *Gray* stated, that the party convicted proposed to bring actions against the convicting magistrates, but it was necessary, as a preliminary step, that the convictions should be quashed, and he prayed that the cases might

be advanced in the Crown Paper, or else the six months limited by the act would expire, and the party convicted be deprived of his remedy.

The *Court* would not say that every application of this nature should be refused, but if entertained at all, the application must be made promptly. With respect to the two convictions which took place in October, the party convicted might have come to the Court in Michaelmas Term. As to the third conviction, there was no reason to suppose the rule to quash it would not be heard before the six months expired, and it was therefore unnecessary.

Gray suggested, that the party bringing the action was bound to give a month's notice of action to the justice, under the 7th section of the act.

Lord *Denman*. Yes, but the notice may be given before the conviction is quashed, although the action should not be brought until after.

Application refused.

Feb. 8.—*Linford* v. *Fitzroy* — Judgment against magistrate for refusing bail arrested on ground of no malice.

— 8.—*Humfrey* v. *Scrope* — Rule absolute to set aside a writ in an action for tithes on an award of Assistant Commissioner.

— 8.—*Reg.* v. *Justices of Birmingham*— Rule absolute for a mandamus to the justices to issue warrant to enforce a poor-rate.

— 9.—*Reg.* v. *Kidwelly Railway Company* — *Cur. ad. vult.*

— 10.—*Bailey* v. *Harris*—Judgment for the plaintiff.

— 10.—*Russell* v. *Phillips*—*Cur. ad. vult.*

— 12.—*Reg.* v. *Paynter*—Judgment for the Crown.

Queen's Bench Practice Court.

Reg. v. *The Justices of Peterborough*. Jan. 30, 1849.

SECOND APPEAL AFTER REMOVAL.

Where the right to appeal has been once exercised and has been determined according to law, no other appeal after removal can be made.

An appeal against an order of justices, for the removal of a pauper, came on for hearing at the Midsummer Sessions, and an objection having been taken that the original order of removal was not produced, the sessions dismissed the appeal and confirmed the order. The paupers were subsequently removed under the order, and the parish to which they were removed brought a second appeal at the October sessions, which the sessions refused to entertain.

Upon a rule for a mandamus to enter continuances and hear the appeal,

Erle, J., held, that as the right of appeal had been once exercised, and the appeal was determined according to law, no new right of appeal existed, by reason of the removal under the order.

Rule discharged.

Haddon v. *Gompertz*. Jan. 31, 1849.

CERTIORARI TO REMOVE FROM THE COUNTY COURT.—PRACTICE.

Held, *that an order for a certiorari does not require to be preceded by a summons, but may be made* exparte.

An order was made *exparte* by *Wightman*, J., at Chambers, under the 9 & 10 Vict. c. 95, s. 90, for a certiorari to remove a plaint from the Brompton County Court. A rule was obtained to rescind the order so made, on the ground that it should have been made on summons and not *exparte*. Upon showing cause against the rule, the case of *Symonds* v. *Dimsdale*, (17 Law Jour. 247, Exch.) was cited, and

Mr. Justice *Erle*, in conformity with that decision, held, that the order for a certiorari did not require to be preceded by a summons, and was properly made *exparte*.

Rule discharged.

Court of Common Pleas.

Shaw v. *Johnson*. Jan. 18, 1849.

COSTS OF WITNESS.—ATTORNEY.

Rule granted, calling on the plaintiff's attorney to pay the costs to a witness which had been allowed on the taxation, and paid by the defendant as costs in the cause.

This was a motion for a rule calling on the attorney for the plaintiff to show cause why he should not pay the sum of 6*l.* 6*s.* as payment to a witness, and which had been allowed on the taxation of the costs of the cause, and paid by the defendant. It appeared by the affidavits that the attorney had told the witness that he was entitled to 4*l.* 4*s.* for his attendance and expenses at the trial, and had tendered a ten pound note, but being unable to give the difference, the witness was not paid. The attorney had received 6*l.* 6*s.* on the taxation, and although he had promised to pay 4*l.* 4*s.*, never paid the applicant, and, to his belief, never intended to do so.

Brown in support of the motion.

The *Court* granted a rule *nisi*, which was afterwards made absolute, no cause being shown.

Smith and others v. *Anderson*. Jan. 15, 18, 1849.

PRINCIPAL AND AGENT.

On the purchase of goods by the agent of an undisclosed principal, the latter having bonâ fide *paid his agent, cannot be sued by the vendor.*

This was an action of *assumpsit* for goods sold and delivered by the plaintiffs to the de-

fendant, who was one of a firm at Bombay. The order had been given by the defendant's London agents, on his account, and the goods were shipped to Bombay; invoices in duplicate being sent to the London agents. The plaintiffs drew bills at 4 months' date upon the London agents, payable to order, endorsed to themselves; but before their maturity, the London agents stopped payment. The defendant had paid the agents for the goods. On the trial before the Lord Chief Justice *Wilde*, a verdict was found for the defendant.

Shee, S. L., now moved to set aside the verdict, and for a new trial, on the ground of misdirection,—the Chief Justice having directed the jury, that although they held that the defendant was the undisclosed principal, yet the plaintiffs could not recover against him, as he had paid his agents; that the evidence of a book of the plaintiffs, in which the goods were debited to the defendants had been improperly rejected, and that the verdict was against evidence: citing *Kymer* v. *Suwercropp*, 1 Camp. 109, 180 c.

Cur. ad. vult.

Maule, J., delivered judgment on the 18th, and said, that the judges concurred in the opinion of the Lord Chief Justice. The defendants, it appeared, were a foreign firm, and the acceptance of their London agents had been taken, which facts alone would have justified the jury in finding that the agents were regarded by the plaintiffs as purchasers, without more. With regard to the rule, that the seller might elect between the principal and agent in suing, the seller could only sue the principal when the accounts between them were such as to render the proceeding fair and just to the principal, and where payment had taken place it would not be so. In the case of *Kymer* v. *Suwercropp*, cited at bar, payment had been made with the intention to defraud the vendor, and in direct violation of the contract of sale; but it was not so here: the money had been clearly remitted to meet the bills as they arrived at maturity, and such a payment could not be supposed to have been fraudulently made, or with an intention to injure the plaintiffs' rights. That case could not then affect the present. The defendants were therefore relieved from all liability, and the application must be refused.

Feb. 8.—*Mayhew and another* v. *Herrick*—Rule absolute to enter verdict for plaintiff, with increased damages on leave reserved—rule *nisi* to enter verdict for defendant or a new trial, discharged.

— 9.—*Turner* v. *Mereweather*—Rule *nisi* to set aside verdict, discharged.

— 10.—*Doe d. Kinglake* v. *Beviss*—Rule *nisi* for new trial, discharged.

— 12.—*Crossfield* v. *Morrison*—Judgment for the plaintiff.

— 12, 13.—*Moneypenny* v. *Dering and others*—Part heard.

— 14.—*Young and another* v. *Raincock*—Rule for new trial discharged.

— 14.—*Morrison* v. *Chadwick*—Demurrer to pleas held, good—to the replication, bad—judgment for the plaintiff.

— 14.—*Edmonds and others* v. *Challis and another*—Rule to enter verdict for defendant discharged.

— 14.—*Murray* v. *Hall*—Rule to enter nonsuit discharged.

— 14.—*Caunt* v. *Thompson*—Rule absolute to enter verdict for the plaintiff on the issue as to want of notice.

— 14.—*Smith* v. *Kenrick*—On special case—Postea to be entered for the defendant.

— 14.—*Lord Marlborough and others* v. *Schroder*—Demurrer to declaration held bad.

Court of Exchequer.

Burnside v. *Dayrell.* Jan. 20, 1849.

LIABILITY OF PROVISIONAL COMMITTEEMAN.—REJECTION OF SECRETARY'S LETTER.

In an action by an allottee of shares against the chairman of a managing committee, to recover back deposits, held, *that the defendant was not liable, unless it appeared that the money had been paid to his account, or that he had exercised some control over its application.*

Held, *also, that a letter from the secretary, stating that the company did not mean to make the parliamentary deposit, was not receivable in evidence, without proof that the defendant had given authority to the secretary to write such letter.*

THE defendant authorised the publication of a prospectus, in which his name was inserted as chairman of the managing committee. He attended one meeting of the committee on the 3rd November, 1845; but on that occasion expressed himself dissatisfied with the management of the committee and never attended again. The plaintiff, on the 11th of November, 1845, paid 42*l.*, the amount of deposits required upon shares allotted to him, to the bankers of the company; but it did not appear that the defendant was one of the persons to whose account the money was paid, or that he knew of its receipt, or exercised any control over it.

It appeared upon the trial of the action, that the plaintiff, on the 4th February, 1846, wrote to one Whitehead, who acted as secretary, for information whether the committee intended to pay the parliamentary deposit pursuant to the Standing Orders, and Whitehead wrote in reply, that they did not. Whitehead's letter was offered as evidence on behalf of the plaintiff, to show that the project was abandoned, but the Chief Baron refused to admit it, being of opinion that the letter of the secretary was not binding upon the defendant.

A rule to enter a nonsuit having been obtained by the defendant, and a cross rule for a new trial on the part of the plaintiff; both points were argued by Mr. *Martin*, Mr. *W.*

Chambers, and Mr. *Addison*, for the plaintiff; and by Mr. *Crowder* for the defendant.

The *Court* held, on the first point, that the plaintiff was entitled to recover back his money from the party who received it, but as it did not appear that the defendant received any portion of the money, or exercised any control over it, it could not be said to have been received for his use. In fact, he was no more liable for money received by other members of the provisional committee, than for goods furnished by tradesmen to their orders; and the case was said to be distinguishable from *Walstab* v. *Spottiswoode*, 15 Mees. & W. 501, because in that case it was assumed that the defendant was one of the persons into whose hands the deposit had come, and the contention was whether, admitting that fact, the plaintiff could recover it back as money had and received. In the present case there was no evidence to show that the defendant was in any manner a party to the contract entered into by the plaintiff. Upon this point, therefore, the defendant was entitled to the judgment of the Court.

The *Court* was also of opinion, that the letter from the secretary had been properly rejected. There was no proof that the defendant authorised the secretary to write such a letter, and although he might have been authorised by other members of the committee, as they by their own acts could not bind the defendant, *a fortiori* their agent had no such authority. It could not be assumed that such a letter was within the general scope of the secretary's authority, and if he had been called as a witness, he might have proved that the defendant dissented from such a letter being written. Upon these considerations, the Court held, that the secretary's letter was properly rejected.

Rule for a new trial discharged, and rule absolute to enter a nonsuit.

Purvis and others v. *Traill, Esq.* Jan. 19, 1849.

EXEMPTION OF SCIENTIFIC SOCIETY FROM RATES, HOW FORFEITED.

A scientific society ceases to be exempt from parochial and other local rates, under the act 6 & 7 Vict. c. 36, when the premises occupied by the society are hired out by the trustees for public meetings and exhibitions not connected with any scientific purpose or object, although the proceeds of such hirings are applied to the general purposes of the society, and not for the benefit of the individual members.

The act 6 & 7 Vict. c. 36, s. 1, enacts, that "no person shall be liable to be assessed or rated, or liable to pay, to any county, borough, or other local rates or cesses, in respect of any land, houses, or buildings, or parts of houses or buildings, belonging to any society instituted for purposes of literature, science, or the fine arts, exclusively, either as tenant or as owner, and occupied by it for the transaction of its business and for carrying into effect its purposes:" Provided, that such society shall be supported wholly or in part by voluntary subscriptions, and shall not make any dividend or bonus between its members, and shall also obtain a certificate from the barrister appointed to certify the rules of friendly societies. The Greenwich Society "for the acquisition and diffusion of useful Knowledge," was certified by John Tidd Pratt, the barrister appointed in that behalf, as a society entitled to the benefit of the act; but it appeared upon a special case, that the trustees of the society were in the habit of letting out the lecture-hall for the accommodation of public meetings and for public exhibitions, and of applying the proceeds to the general purposes of the society. The hall had been let out, it appeared, on various occasions for the use of meetings to petition against the Corn Laws, for the People's Charter, and for other purposes; and it was used for the exhibitions of the Ojibbeway Indians, the American Serenaders, General Tom Thumb, Indian jugglers, and other public exhibitions of a similar character.

In an action by the trustees against Mr. Traill, the police magistrate, for granting a warrant to levy on the society's premises for poor-rates, after hearing Mr. *Bovill* for the plaintiffs, and without calling on Mr. *Crowder*, who was to have argued the case for the defendant,

The *Court* held, upon a special case, that although the society might originally have been instituted for purposes of science exclusively, the trustees had so far departed from the objects of its original institution, by permitting such meetings and exhibitions on its premises, as to lose the right of exemption from payment of poor-rates. The word "instituted" in the act was to be construed, not with reference to the original objects of the society, but as regarded its existing purposes; and the circumstance that the proceeds derived from the letting of the society's premises for purposes unconnected with scientific objects were appropriated to the objects of the society, and not to the profit of the members individually, did not vary the case.

Judgment for the defendant.

Feb. 8.—*Sharrod* v. *London and North Western Railway Company*—*Cur. ad. vult.*

— 9.—*Duke of Beaufort* v. *Mayor, &c. of Swansea*—Rule *nisi* for new trial discharged.

— 10.—*Wood* v. *Perry*—Rule absolute to enter suggestion, depriving plaintiff of costs under the County Courts' Act.

— 12.—*Barrett* v. *Jermy*—Rule absolute for new trial.

— 13.—*Williams and others* v. *Griffith*—*Cur. ad. vult.*

— 13.—*Mills* v. *Guardians of Alderbury Union*—Rule to enter nonsuit discharged.

— 14.—*Cooper* v. *Norfolk Railway Company*—On special case—Fees of steward of manor reduced from 20*l.* to 10*l.*

— 14.—*Reddie* v. *London and North Western Railway Company*—*Cur. ad. vult.*

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 24, 1849.

"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

BANKRUPT LAW CONSOLIDATION BILL.

OUR readers are already in possession of an outline of the Bill lately presented to the House of Lords, by Lord Brougham, "to amend, methodise, and consolidate, the Law relating to Bankrupts, and to arrangements between Debtors and their Creditors with the concurrence of a certain number thereof, and to the distribution of the estates of deceased Debtors in certain cases." The Bill has since been read a second time and referred to a Select Committee, with the avowed object of passing it during the present Session of Parliament.

The Bill, with the Schedule and Appendices, as already stated, contains 134 printed pages, and its magnitude precludes us from printing the whole of its enactments in *extenso*, but the number, variety, and importance of the changes it suggests in this branch of the Law, require that we should avail ourselves of the earliest opportunity of directing attention to those portions of the measure which seem best deserving of immediate consideration.

It is hardly necessary to premise, that the professed object of the bill, as described in the preamble, has our cordial approval. We apprehend that few persons will be found singular enough to deny that "it is expedient to *amend* the laws now in force relating to bankrupts, and to arrangements between debtors and creditors, and to the distribution of the estates of deceased debtors, and to simplify the language of such laws, and to methodise and consolidate the same in one statute, to the end that the said laws may be the better understood by the subjects of the realm, and the more completely enforced." The form, substance, and effect, however, of the provisions by which objects so desirable and of such magnitude are to be effected, cannot be deemed undeserving of examination and discussion, by those who are aware how much hasty and inconsiderate legislation has already done to render this branch of the law unsatisfactory, and indeed injurious to the best interests of the community.

In entering upon the consideration of Lord Brougham's bill, it will be convenient to state that the subject divides itself into five distinct branches, in all of which important changes are contemplated. The enactments may be thus classed:—1st, Those that relate to the constitution and jurisdiction of the Court of Bankruptcy; 2ndly, To the Law of Bankruptcy; 3rdly, To the procedure in Bankruptcy; 4thly, To Private Arrangements between Debtors and Creditors; and lastly, To the Distribution of the Estates of deceased Debtors.

Constitution and Jurisdiction of the Court.

The most striking alteration proposed in the constitution of the Court, is the appointment of a Chief Judge, who is to be selected from one of the six Commissioners acting in London, and is to take rank and precedence next after the Judges of the Superior Courts in Westminster Hall. There are to be 17 other judges: five in

London, and 12 in the country, distributed as at present. The Chief Judge is to have a salary of 2,500*l.* per annum; the other judges acting in London, 2,000*l.* per annum each; and the judges acting in the country, 1,800*l.* per annum each. It is also proposed that the present Chief Registrar (Serjeant Lawes) should retire on his full salary, and the senior Registrar (Mr. Campbell) be promoted.

Far more important alterations, however, are those proposed to be effected in regard to the jurisdiction of the Court, by virtue of which the Court is to exercise a primary jurisdiction in all matters of bankruptcy, subject, however, to an appeal; and a Court of Appeal is established, consisting of the Chief Judge and any two of the other judges acting in London. It is intended that all appeals and petitions, heretofore brought before the Vice-Chancellor, sitting in Bankruptcy, shall in future be brought before the Court of Appeal thus constituted, and that hereafter no Vice-Chancellor shall be empowered to sit in Bankruptcy, except for the purpose of hearing and disposing of pending appeals and petitions.

As these clauses, or, as they are designated in this bill, "Articles," are not to be found in the bill presented last Session, and peculiarly affect the interests of the legal profession, we shall make no apology for copying them verbatim.

"Art. 20. The Court in the exercise of its primary jurisdiction shall have superintendence and control in all matters of bankruptcy, and shall hear, determine, and make order in any matter of bankruptcy whatever, so far as the assignees are concerned, relating to the disposition of the estate and effects of the bankrupt, or of any estate and effects taken under the bankruptcy, and claimed by the assigness for the benefit of the creditors, or relating to any acts done or sought to be done by the assignees in their character of assignees, by virtue or under colour of the bankruptcy, and also in any matter of bankruptcy whatever as between the assignees and any creditor or other person appearing and submitting to the jurisdiction of the Court; and also in any other matter (whether in bankruptcy or not) where the Court, by virtue of this act, has jurisdiction over the subject of the petition or application, save and except as may be by this act otherwise specially provided; and subject in all cases to an appeal to the Court of Appeal mentioned in the following article: Provided always, that if no such appeal shall be entered within 21 days from the date of any decision or order of the Court, and thereafter duly prosecuted, every such decision or order shall be final; and that every appeal shall be subject to such regulation in regard to deposit of costs, as shall by any general rule or order to be made in pursuance of this act be directed."

This section does not appear to be happily or even intelligibly framed, and we hope, before the bill is reported, to find the nature and extent of the jurisdiction it is intended to confer by it, plainly and clearly stated. The following article, as to the appellate jurisdiction, although not so intricate and complex as its predecessor, will also admit of improvement:

"Art. 21. The chief judge and any two of the other judges acting in London, shall and may form the Court of Appeal under this act, which Court shall also be a Court of Review, and shall possess the like power of commitment as is given by this act to the Court of Bankruptcy; and all appeals and petitions to the Vice-Chancellor sitting in bankruptcy, which shall be pending and remain undisposed of at the commencement of this act, shall come on and be heard before the Vice-Chancellor, or the said Court of Appeal, as the Vice-Chancellor shall think fit to direct, and thereafter no Vice-Chancellor shall be empowered to sit in bankruptcy, except for the purpose of hearing and disposing of any such pending appeals and petitions as aforesaid."

Of Solicitors.

THE questions which have been agitated in this and other journals, as well on the *right*, as the *expediency* of solicitors acting as advocates in the Courts of Bankruptcy, will be settled by this bill.

By Art. 312, it is provided, that every solicitor of the Court of Chancery heretofore or hereafter admitted as a solicitor of the Court of Bankruptcy in manner directed by the 6 & 7 Vict. c. 73, (the Consolidation of the Law of Attorneys' Act,) and subject to the provisions in the same act, may *appear and plead* in any proceedings in any Court *without being required to employ counsel*, (except in proceedings before the Court of Appeal.)

It is further provided, that in case any person, not being such solicitor, shall practise in the Court as a solicitor, he shall be deemed guilty of a contempt of Court, and be liable to all the penalties incident thereto, on complaint thereof made to the Court of Appeal.

Of Costs.

The provisions and powers given to the Lord Chancellor in Bankruptcy, under the 1 & 2 Vict. c. 110, (the Abolition of Arrest Act,) are made applicable, by Art. 313, to this act.

Then by Art. 314, the Court may in all cases award such costs as shall seem just.

The Court may also, under Art. 315, order payment of the costs of prosecutions out of the bankrupt's estate, or out of "the Chief Registrar's Account."

It is further provided by Art. 316, that persons known or suspected to have the bankrupt's property, or to be indebted to the bankrupt, may have such costs as the Court may think fit. Witnesses, also, are to have their expenses tendered to them. Persons brought up by warrant of the Court may be ordered to pay the costs incident to their being brought up or apprehended.

PETTY SESSIONS IN BOROUGHS.

The Attorney-General's Bill for the holding of Petty Sessions of the Peace in Boroughs, and for providing Places for the holding of such Petty Sessions in Counties and Boroughs, has just been printed.

It recites, that certain meetings of justices of the peace called Petty Sessions of the Peace are holden in and for certain divisions of the several counties of England and Wales, called Petty Sessional Divisions, and important duties have lately been assigned to the justices attending at such petty sessions, and to their clerks, by certain acts of parliament, and it is desirable to declare and enact that the sittings of justices of the peace, or of a stipendary magistrate, in and for every city, borough, or town corporate having a separate commission of the peace, or for any part thereof, shall be deemed a petty sessions of the peace within the meaning of such acts, and that buildings or places at which such petty sessions may be holden shall, where necessary, be provided. It is therefore proposed to be enacted,

1st, That every sitting and acting of justices of the peace, or of a stipendiary magistrate, in and for any city, borough, or town corporate having a separate commission of the peace, or any part thereof, within England and Wales, at any Police Court, or other place appointed in that behalf, shall be deemed a Petty Sessions of the Peace, and the district for which the same shall be holden shall be deemed a Petty Sessional Division, within the meaning of any acts of parliament, already made or hereafter to be made, having relation to such Petty Sessions, or to any business to be transacted thereat.

2nd, That the justices of the peace for any county, riding, or division, in Quarter Sessions assembled, and the council or other governing body in any city, borough, or town corporate, having a separate commission of the peace, may direct that fit and proper places be built, hired, or otherwise provided for the holding of such Petty Sessions of the Peace, and that the expenses be paid out of the county rate or borough fund respectively.

NOTICES OF NEW BOOKS.

A Selection of Leading Cases on various Branches of the Law, with Notes. By the late John William Smith, Esq. Third Edition, by Henry Singer Keating, and James Shaw Willes, Esqs., Barristers-at-Law. Maxwell and Son. 1849.

Nearly twelve years ago, viz., in April 1837, we thus eulogized the first edition of Mr. Smith's "Leading Cases."—"We cordially recommend this work to the profession; for it is not one of those hasty and crude compilations put forth with such fatal facility and frequency by many of his competitors at the bar; but affords evident marks of long and patient thought and industrious research—the only sure way of acquiring real professional reputation, and reaping its more solid results." We believe that we were the first to call attention to the merits of this work, and have grounds for believing that Mr. Smith expressed much gratification on reading our review. We expressed our real opinion, formed after due deliberation; and that opinion has been ever since emphatically ratified by the approval of the entire profession.

In the preface to his first edition, Mr. Smith stated, that "the plan of the work was believed to be new;" adding in a note, "it is, however, only candid to say, that it is not original, the idea having been suggested by cap. 12, sect. 6, of Mr. Warren's *Law Studies*."[a] We must remark in passing, that the just tribute by Mr. Smith to the originator of the idea, so admirably worked out by Mr. Smith, did not appear in the second, nor is it to be found in the third edition, now under consideration. We are at a loss for the reason of this omission. If Mr. Smith, with a fastidious sense of justice to a friend and brother author, deemed his literary obligation to that friend not too trivial to be once recorded, it savoured somewhat of caprice in him to drop the allusion in his second edition; but we cannot blame the present editors for adhering to their author's authentic text, as he himself committed it to the public. Shortly after the first edition had appeared, it became the subject of a Chancery suit, on the alleged ground that it amounted to a

[a] Ch. xviii., sect. 6, of the last edition of Mr. Warren's Law Studies—in which that gentleman strongly recommended the "second edition" of the work under review.

piracy of the copyright in the reports from which Mr. Smith had taken his modest handful of "leading cases!" The futility of such a charge, however, was promptly demonstrated by the judgments respectively of the present Vice-Chancellor of England, (see *Saunders* v. *Smith*, 7 Law J., N. S., Ch. 227,) and the present Lord Chancellor, on appeal. (Same case, 3 Myl. & C. 711.) Mr. Smith's right being thus triumphantly vindicated, he proceeded to complete the work: which he left behind him, at his death in 1845, a permanent record of his superior talents and learning. The second edition, which appeared early in 1841, was out of print at the time of his death,—a fact very significant of the estimation in which the work was held by the profession; and the industrious and gifted author had made considerable progress in the preparation of a third edition. That, however, he was not permitted to see; and in looking for a fitting editor for so important a work, the selection of Messrs. Keating and Willes does credit to the publisher's judgment. These gentlemen were both intimate friends of Mr. Smith, who reposed great confidence in them; and had he named any one to edit the third edition of a work on which he felt that so much of his reputation depended, we are convinced that he would have selected one or either of the two gentlemen who have thought proper jointly to undertake the task which is now submitted to our critical ordeal. They are both able lawyers, and we have no hesitation whatever in expressing our belief that Mr. Smith himself could scarcely have excelled them in the discharge of their arduous and responsible editorial duties. Their numerous additions to the notes show that they have thoroughly entered into the spirit of their author. They seize firmly hold of leading principles, and keep clear of minor details and distinctions, with uniform steadiness. They show a very vigilant eye kept on the developement of the leading doctrines of law by the Courts—not only those of Law, but of Equity; and there are evident many important additions to, and sometimes qualifications of, the positions laid down in the original work. This edition, in short, abundantly proves that it is the production of clear-headed accurate lawyers. We cannot point out an omission, or an error, of the least importance; and we speak after a pretty careful investigation. The work has passed a very critical stage in its appearance after its author's death; and we hope that ensuing editions will come from the same hands, or others not less able. If that be so, the "Leading Cases" will soon occupy a post nearly as distinguished in legal literature as Williams' Saunders; which has not been less indebted to Justices Patteson and Williams, than have been the "Leading Cases" to Messrs. Keating and Willes. The work is considerably increased in bulk, and we should not object to see that bulk even doubled by the present, or equally competent other editors: in such a case, we should disregard the standing canon—*μεγα βιβλιον, μεγα κακον.*

REFORM IN CHANCERY.

FURTHER REPORT OF THE LAW AMENDMENT SOCIETY ON THE MASTERS' OFFICES.

THIS further Report of the Equity Committee of this Society has just been printed, and we shall lay before our readers an abstract of the Orders proposed to be made for amending the Practice before the Master. This abstract is preceded by several observations, to which we shall hereafter advert.

I. *As to the General Powers of the Masters.*

1. The Masters to have full powers to decide, as Judges of the Court of Chancery, all matters brought before them, subject to appeal to the Lord Chancellor, Vice-Chancellors, or Master of the Rolls.

2. The Master to sit in open Court (with power to sit in private), and have cause lists of all, except summary proceedings; and to hear matters continuouly, except when they shall direct otherwise; no notice required of the time when proceedings set down in the paper will be heard.

3. Matters in which original jurisdiction is not expressly given to the Master are to be brought before him under orders of reference, which are to be either special or general.

4. Under a special order, the Master is to decide only the matter referred, and questions incidental to it.

5. Under a general order the Master is to decide, in the first instance, all questions then pending in the cause referred; and to have power to decide all questions to arise subsequently. But such questions may be brought first before the Court to which the cause is attached.

6. All orders of reference at or after the hearing to be general.

7. The Master to make decrees and orders and give certificates, not to make reports; and their certificates not to be subject to be sent back for review, unless in the case provided by art. 4, s. xi.

8. The Master may fix a time for persons,

not parties to a cause before him, to come in and prove their claims.

9. The Master to appoint a person to act for creditors or legatees, or any of them, with their assent, and with or without a salary.

10. The assent not to be revocable without the Master's sanction.

11. All who have assented to be bound by all the acts of the persons so appointed, and to be liable to pay their proportion of the salary (if any), and of any costs incurred until the appointment is revoked.

12. The Master has full power to enlarge the time for taking any proceeding before him.

13. The Master may by his decree, on the application of any of the parties, reserve any question of law or practice for the decision of the Superior Judges.

14. Such questions may be brought on on motion.

15. The Master may determine questions of law arising on any pleading before him on the assumption of the truth of the facts stated, without proof of them.

16. And such questions may be brought, on motion, before the Superior Courts.

17. The Master may allow any one or more of different questions arising on the same pleading, to be brought on and disposed of separately.

18. The costs of all proceedings before the Master shall be in his discretion.

II. *As to Proceedings before the Master generally.*

The proceedings before the Master must be founded upon either, 1. a petition; 2. a statement of defence; 3. a charge; 4. a countercharge.

III. *As to Proceedings before the Master on Petition.*

1. Any person may file a petition, marked for hearing before the Master, and containing a list of the defendants.

2. Service of the prayer of the petition, and names of the petitioners and defendants, sufficient.

3. Such a petition may be pleaded or demurred to as if it had been a bill.

4. A defendant to such a petition may file a consent to its being heard before the Master.

5. A time fixed within which the petitioner must obtain an order referring the petition to the Master.

6. The order to be made of course, and to refer the cause generally.

7. The petitioner may convert his petition into a bill.

8. A defendant may file a dissent to the petition being heard before the Master.

9. In that case the petitioner must convert his petition into a bill within four weeks.

10. An order to convert a petition into a bill to be of course, and to be served on all parties who have appeared to the petition.

11. All such parties to be parties to the bill without service of subpœna, but the time for answering to commence from the notice of the conversion of the petition into a bill.

12. A defendant dissenting as above to pay all costs up to the hearing, unless the Court order otherwise.

13. A defendant to a petition referred to the Master must carry in his statement of defence within four weeks.

14. A defendant may carry in a further statement of defence to an amended petition within the time allowed for a further answer to an amended bill.

15. Otherwise no second statement of defence as to the same matter is allowed.

IV. *As to Proceedings before the Master upon a Charge.*

1. Warrants to consider the decree unnecessary.

2. All special orders of reference to fix a time for charges to be carried in thereunder.

3. Under a general order of reference, charges to be carried in within three weeks from the time when the order is drawn up or served.

4. The Master to fix a time in causes heard before him for charges to be carried in.

5. Parties making default cannot carry in a charge without leave.

6. Notice of all charges and amendments to be served on all parties.

7. Under a special order of reference, the notice to specify a time fixed by the Master for carrying in countercharges.

8. Under a general order of reference, three weeks allowed for carrying in countercharges.

9. Fourteen days allowed to carry in a countercharge to an amended charge.

10. Otherwise no further countercharge can be carried in without leave.

11. Separate charges to be dispoed of separately, unless by order of the Master.

V. *As to the Amendment of Pleadings before the Master.*

1. An order to amend clerical errors may be obtained at any time.

2. An order to amend a petition or charge is of course before the statement of defence or countercharge is carried in.

3. One order to amend a petition or charge generally may be obtained as of course at any time before the statement of defence or countercharge is carried in.

4. One order to amend a statement of defence or countercharge may be obtained as of course at any time before the petition or charge is at issue.

5. A special order to amend may be granted before the petition or charge is at issue on affidavits similar to those required by the 67th Order of May, 1845.

6. And after the petition, &c., is at issue, on affidavits similar to those required by the 68th Order of May 1845.

7. The 69th Order of May, 1845, to apply to such affidavits.

8. If the amendment is not made in fourteen days the order is null.

9. A special order to carry in a further

charge, &c., may be substituted for a special order to amend.

10. Orders of course to amend before the Master to be obtained on petition at the Rolls.

VI. *As to the Form of Pleadings before the Master.*

1. Accounts to be set forth only by schedule, and not in the body of the pleading.

2. The 122d Order of May, 1845, to apply to proceedings before the Master.

3 and 4. Parties may use their petitions, bills, or answers, or any parts of them, as charges or countercharges on carrying in a statement of their intention.

5. A charge and countercharge cannot be combined.

VII. *As to Proceedings by way of Supplement and Revivor before the Master.*

1. Supplemental matter may be introduced by amendment until the hearing.

2. After the hearing by carrying in a charge.

3 and 4. Suits may be revived, or extended to parties born after they were commenced, by an order made on a show cause warrant against such persons or their guardians or committees.

5. Cause to be shown within fourteen days after service.

6. If a suit abates by the death of a plaintiff, the Master may compel the survivors or the representatives of a sole plaintiff to revive.

VIII. *As to the Mode of bringing Proceedings to an Issue, and as to Evidence before the Master.*

1. On a petition, six weeks are allowed after the statement of defence is carried in to amend, set down the petition for hearing, or put it at issue.

2. On a charge, four weeks on a general order of reference, and a time fixed by the Master on a special order, are allowed after the countercharge is carried in to amend, set down the charge for hearing, or put it at issue.

3. Notice of the time when the petition or charge will be at issue to be served.

4. On a special order of reference, the notice to contain a time fixed by the Master for bringing in evidence.

5 and 6. In other cases six weeks allowed, and one week extra for affidavits in reply.

7. No affidavit or deposition admissible in support of petition or charge without a special order, unless the same is properly put at issue.

8. No further affidavits or depositions admissible after the time fixed, unless by an order made on proof of due diligence.

9. Any party before the Master may be examined *vivâ voce*, or on interrogatories.

10. Affidavits may be received in evidence after an examination *vivâ voce*, or upon interrogatories.

11. Publication is to pass at the end of the time limited for carrying in evidence.

12. Causes, &c., to be set down in one week after the time limited for carrying in evidence.

13. *Vivâ voce* examination to take place at the hearing, unless otherwise ordered.

IX. *As to the Computation of Time before the Master.*

The periods of vacation mentioned in the ——Order of May, 1845, are to be excluded in all computations of time before the Master.

X. *As to Proceedings on Default before the Master.*

1. Any party may apply to the Court for the carriage of an order of reference, if there be four weeks' delay in acting upon it.

2. Any party may carry in a charge under an order or decree of the Master, if there be six weeks' delay in acting upon it.

3. On default in carrying in a statement of defence or countercharge, the opposite party may serve notice of his intention to obtain judgment without delay.

4. After such notice, the defaulting party can bring in his defence, &c., only by leave, and on payment of all costs thereby occasioned, unless the Master order otherwise.

5. The petition or charge to be at issue in fourteen days after service of the notice.

6. A party in default may carry in evidence notwithstanding.

7. If a petitioner does not amend, set down the petition for hearing, or put it at issue in due time, the defendant may apply to have the petition dismissed.

8. If the person who has carried in a charge does not amend, set it down for hearing, or put it at issue, in due time, the opposite party may serve a notice that the charge will be at issue at a time fixed by the Master.

9. A charge may be set down for hearing by the opposite party at the end of eight weeks after it is at issue.

10. On default at the hearing of a charge, either party may proceed exparte.

XI. *As to the Decrees, and Orders of the Masters, and Appeals therefrom.*

1. The Decrees, &c., of the Master to be passed and entered as the Lord Chancellor shall direct.

2. The decrees, &c., to refer to the evidence, and state the facts proved, and any evidence rejected, or inquiries refused.

3. The decrees, &c., not to be reheard except by the Master, but may be appealed from by petition or motion.

4. Decrees, &c., may be referred back to the Master to receive evidence rejected, or make inquiries refused.

5. The statements in the decrees, &c., of the Master to be taken as proved where not specifically objected to, and no evidence to be admissible on appeal unless used or tendered before the Master.

ATTORNEYS' CERTIFICATE DUTY.

THE "Reasons" in support of the repeal of this obnoxious tax have been printed by the Incorporated Law Society, and copies sent to all the provincial Law Societies,

urging them to promote petitions, and to apply to the members of the several districts to present them—accompanied by an explanation of the nature of the grievance, and to induce their attendance in the House when the bill shall be brought in.

As a complete revision is about to take place of the taxes and expenditure, the amount of this impost, though large to each individual, will, if removed, be scarcely felt in the aggregate revenue.

We understand that "The Metropolitan and Provincial Law Association" is also exerting itself in support of the measure by communications to the various towns throughout the kingdom where there are a certain number of attorneys.

Nothing is to be done without agitation, even in behalf of the present most just demand. Therefore, (departing from all our old conservative rules,) we say, *agitate*.

LEGAL ANECDOTES.

LORD HALE.—STUDY.

"My respected Mr. Langton had shown me, in the handwriting of his grandfather, a curious account of a conversation which he had with Lord Chief Justice Hale, in which that great man tells him, that for two years after he came to the Inn of Court, he studied sixteen hours a day; however, his lordship added, that by this intense application he also brought himself to the grave, though he were of very strong constitution, and after reduced himself to eight hours, but that he would not advise any body to so much; that he thought six hours a day, with attention and constancy, was sufficient; that a man must use his body as he would his horse and his stomach—not tire him at once, but rise with an appetite." 8 *Boswell's Life of Johnson, by Croker*, 314.

See this conversation at length in *Seward's Anecdotes of Distinguished Persons*, 489.

In our times there should be a regular pupillage, afterwards constant attention to reading and business: eight hours is a good medium, till business requires more.

S. P.

GAME CERTIFICATE, OR TESKEREH FOR SHOOTING IN TURKEY.

As proof of being permitted to shoot with his own hand in Roomelia and Anatolia, this license is granted to ———, a subject of Great Britain, the same having been notified and demanded by the ambassador of the said kingdom, resident at the Porte of Felicity. It is understood, however, that the said ——— is not to discharge his gun in the vicinity of the royal palaces, kioshks, or barracks, or near places where men assemble (for pleasure or business): he is also forbidden to pass barriers or fences (on private property).

This our license is granted for the year ———, from the 1st of September to the end of February, (Greek calendar). In virtue of this present hunting and shooting certificate all imperial troops and authorities are enjoined not to cause let or hindrance to the bearer.

This license is given by the deputy of His Excellency the Serasker, at the Porte, 1 Shaban, 1258 (1842).

From *White's Three Years in Constantinople*, vol. 3, p. 93.

MOOT POINTS.

CONSIDERATION FOR GUARANTEE.

THE querist on this subject in the *Legal Observer* of last week, will find the why and because of the construction of the section of the Statute of Frauds, which seems to puzzle him in the cases, 1 Cr. & Jerv. 464, 1 Scott, 668, and 5 M. & W. 641, where it is clearly laid down that a consideration is essential to make a binding agreement (or guarantee) by parol or writing not under seal.

J. H.

INTERMENT IN PAROCHIAL BURIAL-GROUND.

IT is the common law right of every man, woman, and child, to be buried in some part of the parish church-yard, (Burn's Ecc. Law, 258,) and this without payment of any fees to functionaries. This can be enforced by mandamus, —see 1 B. & Ad. 122; Hob. 175; Salk. 332. The burial for the dead of his parish is a parochial priest's duty, and if he neglect or refuse, by canon 86 he may be suspended for nine months, and if inconvenience or nuisance arise from his neglect or refusal, the temporal courts can punish on indictment or information. (*Andrews* v. *Cawthorne*, Willes, 537.)

E. P. H.

[See also the *Postscript*.]

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Jan. 23rd, to Feb. 16th, 1849, both inclusive, with dates when gazetted.

Cullington, Daniel, Daniel Cullington, jun., and George White, 2, Craven Street, Strand, Attorneys and Solicitors, so far as respects the said George White. Feb. 16.

Goodman, Richard Alfred, and Thomas Watts, 8, Coleman Street, Attorneys and Solicitors. Feb. 13.

Lawrence, Northmore Herle Pierce, and Samuel Rowles Pattison, Launceston, Attorneys-at-Law. Jan. 30.

Paynter, Francis, and Rowland Augustus Griffith Davies, Penzance, Attorneys and Solicitors. Jan. 26.

MASTERS EXTRAORDINARY IN CHANCERY.

From Jan. 23rd, to Feb. 16th, 1849, both inclusive, with dates when gazetted.

Banfield, John, St. Mary's Scilly, county of Cornwall. Feb. 9.
Brown, Washington Hamilton, Swansea. Feb. 13.
Cunnington, Augustus, Braintree, Feb. 13.
Evans, Robert, Liverpool. Feb. 13.
Grain, Frederick, Cambridge. Jan. 26.
Hicks, Christ., jun., Shrewsbury. Feb. 6.
North, William, Leeds. Feb. 13.
Radford, Jas., Newcastle-on-Tyne. Feb. 16.
Roby, William, Liverpool. Feb. 9.
Toynbee, Robert, Lincoln. Jan. 26.
Wright, Joseph, Doncaster. Feb. 9.

PERPETUAL COMMISSIONERS.

Appointed under the Fines' and Recoveries' Act.

Ball, Edwin, of Pershore, in and for the counties of Worcester, Warwick, and Gloucester. Jan. 30.
Charsley, Frederick, of Amersham, in and for the county of Buckingham. Feb. 6.
Parker, George Cutler, of Wrexham, in and for the counties of Denbigh and Flint, Feb. 13.

ATTORNEYS TO BE ADMITTED.

[Concluded from our last Number, p. 312, *ante*.]

Easter Term, 1849.

Queen's Bench.

Randall, Thomas, 8, Castle-street, Holborn	John Randall, King's-bench-walk, Temple
Roberts, Richard Willett, 10, Gray's-inn-place; and Worcester	R. John Roberts, Worcester
Richards, George Seale, Old Bond-street; and Edgbaston	George Whateley, Birmingham
Radford, Edward Vaughan, Judd-street; and Atherstone	Henry Radford, Atherstone
Richardson, George, Chorlton-upon-Medlock	Thomas Potter, Manchester; Stephen Heelis, Manchester
Rogers, William, 74, Newman-street; and Keighley	Thomas Harrison, Kendal
Smith, William Thomas, Swinton-street, Gray's-inn-road; and Berwick-upon-Tweed	Robert Weddell, Berwick-upon-Tweed
Smith, George, 9, Tokenhouse-yard; and Montague-Place, Islington	John Lush Alford, Salisbury
Smith, Hubert, 5, Princes-street, Bedford-row; and Bridgnorth	John Jacob Smith, St. James's, Bridgnorth
Smith, Robert Alexander, Richmond-green, Surrey	Robert Smith, Richmond; Robert George Clarke, Craven-street, Strand
Showler, Robert Francis, 1, Union-grove, Wandsworth-road	Joseph Lucas, 1, Trinity-place, Charing-cross
Sheppard, Francis John, Wells	Richard Sheppard, Wells
Stringer, Joseph, Wakefield; and Horbury	William Stewart, Wakefield
Symons, Richard James Edward, 8, Claremont-place, Pentonville; and Wadebridge	Richard Symons, Wadebridge
Stow, Ambrose, 4, Montague-place, Old Kent-road	John Henry Cromwell Russell, 8, Gray's-inn-square; William Ralph Buchanan, Basinghall-street
Spackman, George, 14, Everett-street, Russell-square; Bradford; Devonshire-street	Richard Travers Way, Bradford
Sewell, Henry, Stamford-hill; George Town, Cape of Good Hope; on the Seas	Edward Thompson, Salters'-hall; Isaac Sewell, Old Broad-street
Saunders, George Morley, 39, Bernard-street, Russell-square; and Lyan	Messrs. Jarvis and Jarvis, Lynn
Templer, Charles James, 4, Inverness-terrace, Bayswater	John Geare, Exeter; John Sims Weir, Nicholas-lane
Templer, Reginald William, 4, Inverness-terrace, Bayswater	Henry Karslake, Carlton-chambers; Charles Fletcher Skirrow, Bedford-row
Tweedie, Alexander Forbes, 15, Circus, Greenwich	Matthew Hale, Ely-place; Frederic Lewes Austen, Ely-place
Taylor, Robert, 4, Vere-street, Cavendish-square	Samuel Potter, sen., 36, King-street, Cheapside
Taylor, John, 30, Upper Gower-street; and Rotherham	William Fretwell Hoyle, Rotherham
Tompsett, John, 68, Ebury-street, Pimlico	Joseph Lucas, Trinity-place, Charing-cross
Tucker, Samuel Ward, 22, Surrey-street, Strand; Tokenhouse-yard; and Gerrard-street	Philip Mathews Chit, Shaftesbury
Thompson, Richard Tinniswood, Preston	Richard Easterby, Preston

Williams, Gr Surrey-street, Strand; King-square; Edward's-terrace; and Dolgelly	Edward Owen, Dolgelly; William Jones, Crosby-square
Wall, Richard (formerly Richard Wall Wallgate), Jcreet, Upper Holloway	Robert George Smith, New-inn
Westall, Thon Upper Barnsbury-street, Islington; and borough	John Evans, Southampton-street; Joseph Row, Furnival's-inn
Wills, Willi, Norfolk-street, Strand; and Wolverhon	Thomas Bolton, Wolverhampton
White, Alexr Miller, Clapham-common, Surrey; New Boswell-court	Henry Griffin Dean, Rookery, Colchester
Wray, Williarrington-square	Jackson Walton, Warnford-court; David Erskine Forbes, Warnford-court
White, Willi anchester	William Lister Welsh, Manchester
Williams, Isaiath; King-street, Holborn; and Stonehou	John Taylor, Southstoke
Williams, Gri Llwyn, Merionethshire	Humphrey Lloyd Williams, Dolgelly
Watkins, Jam 6, Calthorpe-street; Bolton-le-Moors; Albert-street, Pimlico	James Kyrke Watkins, Bolton
Wells, Willia, Upper Phillimore-place, Kensington	Robert Brotherson Upton, 20, Austin Friars
Watts, Robert k, 5, Newman's-row, Lincoln's-inn-fields ranbrook; Tottenham-court-road	John Elliot Wilson, Cranbrook
Woodhouse, mas, 16, Calthorpe-street; and Bolton-leors	John Woodhouse, Bolton-le-Moors
Wright, Herb Birmingham	Edwin Wright, Birmingham
Watts, Willia 1, Lamb's Conduit-street; Vincent-terra Islington; Palace-place, Whitehall; and ilmot-street	John Wadsworth, Nottingham
Wood, Henry cott, 8, Warwick-road, Clapton; and Thru	Henry Harris, Cainscross, near Stroud
Worship, Stag Day, 17, Upper North-place, Gray's-iroad	Wm. Worship, Great Yarmouth; George William Andrews, Sudbury
Ward, Thom Robinson, Wisbeach; Verulam-building and Wolverhampton	Thomas Chubb, Malmesbury

Added to the List pursuant to Judges' Order.

Barrow, Jose, 1, Regent's-place, East, Regent's-square nd Wells-street	Edmund Ward, Prescot; Palgrave Simpson, Bedford-row
Batham, Jan, Kidderminster	William Brinton, Kidderminster
Chapman, Fierick, 68, George-street, New-road; and Denport	William Chapman, Devonport
Dyson, Artr, 7, Clement's-inn; and Burton-crescen	William Dyson, Southampton-row; and Chancery-lane,
Emmet, Wilm Henry, 1, Albert-terrace, Paddington; a Birkenshaw	Charles Firth, Birstall; Finlay Knight, Bloomsbury-square
Hart, Thom Glover, 19, Keppel-street, Russell-square and Dyers'-hall	Thomas Hart, Reigate; Henry Batt, Dyer's-hall
Page, Geor, Balsall-heath, King's Norton	George Augustus Page, Birmingham
Roby, Willm, Liverpool	Thomas Rogerson, Liverpool
Trenerry, Jn Griffiths, Bristol	Matthew Perkins, Bristol
Whitley, Edard, Everton, near Liverpool	Matthew Dobson Lowndes, Liverpool
Wooler, Octvius Borradaile, Darlington	William Rymer, Darlington.

NOTES OF THE WEEK.

APPOINTMENT OF QUEEN'S COUNSEL.

Messrs. Calvert, Lloyd, Malins, and R. Palmer, of the Chancery Bar, and Messrs. Greenwood and Keating, of the Common Law Bar, have been promoted to the rank of Queen's Counsel and Mr. Serjeant Kinglake has obtained a patent of precedence. Several other gentlemen who applied for silk gowns, have had an intimation that they were not to consider their applications refused, but only postponed for a limited period.

ACCIDENT TO MR. JUSTICE COLTMAN.

We are concerned to hear, that Mr. Justice Coltman has suffered some injury by his horse falling with him, and that it is to be feared he will not be able to attend at the opening of the Commission for the Oxford Circuit, at Abingdon, on Tuesday next.

SELECTION OF COURTS BY LEADERS.

We understand that the leading members of the Common Law Bar are seriously considering the expediency of attaching themselves to particular Courts, and only attending in other Courts upon special occasions, or upon the discussion of rules for new trials in cases in which they have been engaged on Circuit, or at Nisi Prius. Such an arrangement, we are satisfied, would afford very general satisfaction to the larger portion of the profession, as well as to the public. It is said that there are only two or three dissentients to the proposed arrangement.

NEW POLICE MAGISTRATE.

Mr. Gilbert A. à Beckett has been appointed to the office of Police Magistrate, vacant by the death of Mr. Jeremy of the Greenwich and Woolwich Police Court. This appointment cannot fail to give great saction both to the public and the professi Mr. à Beckett possesses not only much l learning and acuteness, but extraordinarynt and general knowledge peculiarly suitto the varied nature of the duties of the e.

RECENT DECISIONS IN THE SUPERIOR COTS,

AND SHORT NOTES OF CASES.

Lord Chancellor.

Attorney-General v. *Corporation of Chester.* 17, 18, 19, 20 Dec. 1848, and Jan. 30, 1849.

TRUSTEES. — MUNICIPAL CORPORATION. — CHARITY.

Since the passing of the Municipal Corporation Act, the estates of the Hospital of St. John, at Chester, were held *to be divested from the corporation, and new trustees were appointed under the act, there being no corporation in the master and brethren of the hospital.*

THE information in this cause was filed in 1842, for the administration of the estates of St. John the Baptist's Hospital at Chester. The income of the charity had been administered for about 150 years by the municipal corporation of Chester; but after the passing of the Municipal Corporation Act, (4 & 5 W. 4, c. 76,) these charities were devested out of the corporation, and trustees were appointed. The corporation and these trustees were made defendants to this information. The Master of the Rolls had, upon an objection to the pleadings for want of parties, in which it was submitted that the hospital, consisting of master, brethren, and sisters, was a corporation sole, and was entitled to the estates, dismissed the demurrer. The defendants now appealed from that decision.

J. Parker, Rolt, and *T. H. Hall* for the petitioners; *Solicitor-General, Twiss, Teed,* and *Blunt* for the other parties.

The *Lord Chancellor,* after referring to the charters and grants from the Crown, relating to the hospital, held, that there was no proof of the existence of any corporation in the master, brethren, and sisters; and that the charity fell within the description of those charities vested in municipal corporations, which were on the passing of the 4 & 5 W. 4, c. 76, devested out of the corporation.

The appeal, therefore, was dismissed with costs.

Mosley v. *Baker and others.* Jan. 30, 1849.

BUILDING SOCIETIES.—MORTGAGE.

A shareholder in a building society having mortgaged his shares the society, was held *not entitled to redewithout paying the future subscriptions.*

THIS was an appeal from Vice-Chancellor Wigram. The defendantere trustees of a building society, called "TEquitable Provident Association," whichas established under the 6 & 7 Wm. 4, c.2. (the Benefit Building Societies Regulatio Act,) in 1844. The plaintiff, in 1845, purcied 12½ shares, and wanting money in his busss as a builder, borrowed of the society a n of 750*l.* on his shares, and at the same ne mortgaged certain premises at Hoxton, cording to the regulations of the society. T plaintiff was afterwards desirous to redeem mortgage by payment of the sum due, aftereducting 10*s.*, a month subscription paid on s shares, and 4*s.* a month, redemption mors. The defendants, however, refused to reconvey, insisting that they were entitled to l future subscriptions on the shares until th dissolution of the society. On a bill filed f redemption, the Vice-Chancellor Wigram ha decreed, that the plaintiff was entitled to thereconveyance upon the payment of the future ibscriptions, to be ascertained by the calculatin of an actuary of the probable duration of th society, and to be treated as due.

The *Lord Chancellor* held, thaithe decision of the Vice-Chancellor Wigram was correct, and said, that as there was no stiplation in the deed of mortgage for redemption the plaintiff was not entitled to redemption in he ordinary way. There was likewise no departure from the rules of the society in requiringthe plaintiff to make payments on his shares during the existence of the society: the 37th rue requiring such payment until the objects of the association were accomplished. His lordslip then referred to rules 48, 50, 58, as to the mode of taking mortgages, and the 62nd rule, and said, that the construction put on the deed and ruled by the Vice-Chancellor, prcceeded on right principles, and the appeal must be dismissed with costs.

Feb. 16.—*In re Dyce Sombre*—Stand over.
— 16.—*Stewart* v. *Forbes*—Part heard.
— 16, 21.—*Allfrey* v. *Allfrey*—Appeal dismissed with costs.

— 17, 21.—*Beardmore* v. *North Western Railway Company*—*Cur. ad. vult.*
— 21.—*Sharpe* v. *Arbuthnot*—Part heard.

Rolls Court.

Mitchell v. *Koecker.* Jan. 19, Feb. 10, 1849.

PRIVILEGE.—ANSWER.—INCOME TAX COMMISSIONERS.

Held, *that a defendant is entitled to the protection of the Court, where, by disclosing the matter in question he renders himself liable to penalties.*

This suit was instituted for the purpose of setting aside an agreement whereby the plaintiff agreed to purchase the business of the defendant, who was a dentist. The business had been represented as bringing in about 2,000*l.* a-year, and to be increasing. The plaintiff afterwards filed a supplemental bill, in which he alleged, that the defendant had returned his income to the Income Tax Commissioners as under 500*l.*, and concluded by praying, that this allegation might be treated as if it had been in the original bill. To this the defendant demurred, on the ground that the plaintiff was not entitled to a discovery as to the amount stated to the Commissioners.

Turner and *Anderson* appeared in support of the bill; *Purvis* and *Wright* for the demurrer.

The *Master of the Rolls* held, that the defendant was not bound to make the discovery. Penalties were imposed on parties making false returns to the Commissioners, and as the defendant might, if he made such disclosures, possibly be exposed to such penalties, the Court would protect him from the discovery. The demurrer must, therefore, be allowed.

Feb. 17.—*Attorney-General* v. *Gains and others*—Order for appointment of new trustees, and directions for charity scheme.
— 17.—*Lucena* v. *Parkes*—Stand over for official assignee's consent.
— 17.—*Johnson* v. *Thomas*—Stand over, with leave to plaintiff to amend.
— 19.—*Harrison* v. *Grimwood*—Reference back to the Master to ascertain the date of the births of certain infants entitled under the testator's will.
— 19.—*Wood* v. *Wood*—Reference to the Master as to what payments were made in respect of a sum borrowed on bond, and when.
— 19, 20.—*Hooper* v. *Denoon, Denoon* v. *Hooper*—Stand over.
— 20.—*Humble* v. *Humble.*—Costs of appearing on petition of purchaser to pay money into Court refused, where not applied for at the time.
— 17, 21.—*Attorney-General* v. *Corporation of London and others*—Part heard.

Vice-Chancellor of England.

Onslow v. *Wallis,* Jan. 16, 1849.

CONVEYANCE TO DEVISEES IN TRUST.

A conveyance was decreed from the trustee under a settlement to the trustees under a will, although no heir to the testatrix could be found, and the trust was charged with certain payments out of the estate.

This bill was filed for a conveyance of an estate by a trustee of a settlement under the following circumstances:—Certain landed property was vested upon marriage in a trustee for the separate use of a lady, who possessed a power of appointing the property by will. In compliance therewith she appointed to the plaintiffs, subject, however, to certain payments. No heir to the testatrix could be found, and the trustee under the settlement refused to convey the estate to the trustees under the will.

Bethell and *Bird* for the plaintiff; *Rolt* and *Prior,* contrà.

The *Vice-Chancellor* held, that the devisees in trust were entitled to a conveyance. If there was any personal benefit accruing to the trustees inconsistent with the beneficial interest of any party under the will, they would be deemed to hold the property subject to the purposes directed by the testatrix.

Tomlinson v. *Troughton.*—Jan. 30, 1849.

ADMINISTRATION SUIT.—LIABILITIES OF EXECUTORS.

Where it appeared that an executor had not dealt improperly with the assets received under the will, and had also been declared by the testator not liable for accidental loss; Held, *not responsible for loss occasioned to the estate by the failure of the bankers.*

The testator had purchased an estate near Preston, jointly with his brother, the present plaintiff, Thomas Tomlinson, and afterwards borrowed from his brother Thomas, two sums of 14,000*l.* and 3,000*l.*, and charged the same on the purchased estate. The plaintiff had been appointed executor to the testator, and was desirous that the testator's undivided moieties of the estate should be sold to redeem the mortgages. The plaintiff had, as executor to the testator, received various sums due to the estate, and paid the same into a bank which afterwards failed, and it was urged that he was liable to reinstate such moneys to the estate.

Bethell and *Bazalgette* for the plaintiff; *Stuart, Rolt,* and *Greene,* contrà.

The *Vice-Chancellor* said, that no objection could be made to an executor, in a case like the present, where the testator had by his will declared that the executor should not be liable for accidental loss. The accounts appeared to be properly kept, and there was no decision asked in the original decree with regard to the way of keeping the accounts. It appeared that the whole state of affairs was known to the defendants, and yet they had done nothing, and in the meantime this loss occurred by the failure of the bankers. There was no case made out showing that the plaintiff had improperly dealt with the assets, and he could not, therefore,

be held responsible for the loss occasioned to the estate by the bankers' failure.

Feb. 15.—*Sharpe* v. *Arbuthnot*—Injunction restraining actions on bills of exchange—Reference to the Master.

— 15. — *Edge* v. *Duke*—Bill to restrain bringing of action dismissed with costs.

— 15.—*Boddington* v. *The Great Western Railway Company*—Bill for specific performance of agreement dismissed with costs.

— 16.—*King* v. *Brown*—Reference back to the Master.

— 16.—*Marsden* v. *Yorke*—Injunction restraining defendant from bidding.

— 16.—*Thornton* v. *Knight*—Bill to cancel policy of insurance dismissed with costs.

— 17, 20.—*Drewer* v. *Mawdesley*—Petition dismissed with costs.

— 21.—*Myers* v. *Perigal*—Judgment on construction of will.

— 21.—*Miller* v. *Pridden*—Bill as against purchasers dismissed with costs.

Vice-Chancellor Knight Bruce.

Pothecary v. *Pothecary*. Dec. 7, 1848.

LEGACY.—LUNATIC.—COSTS.

Executors invested a legacy given to an adult imbecile legatee in consols, and accumulated the dividends. On a bill filed for payment of the legacy and interest at 4 per cent., the Court refused to disturb the investment, and under the circumstances of the legatee, ordered the costs to be paid out of the testator's estate.

THE bill in this case was filed by the next friend of the plaintiff, a lady of unsound mind, against the executors of the will of Isaac Pothecary, deceased, for the payment into Court of the legacy given to the plaintiff by the said will. The cause was set down on bill and answer, and from the pleadings it appeared that Isaac Pothecary, by his will dated the 7th of Sept. 1836, bequeathed to his brother Matthew Pothecary, the plaintiff's father, the sum of 1,000*l.*, and to each of the five children of the said Matt. Pothecary, except his son Isaac, the sum of 300*l.*, and he directed that the said legacies should be paid at the expiration of 12 calendar months next after his decease. By a codicil to his will, dated the 28th of Feb. 1838, the said testator, after referring to the death of his said brother Matthew Pothecary, since the execution of the will, and the bequest in the will to him of 1,000*l.*, gave and bequeathed to the said Matthew Pothecary's children the said sum of 1,000*l.* equally to be divided between and among them, share and share alike. In March, 1838, the testator died, and his executors invested the amount of the plaintiff's legacies (466*l.* 13*s.* 4*d.*), after deducting the legacy duty, in 3 per cent. Consols, in their names, and from time to time afterwards invested the dividends, but on account of the plaintiff's incapacity to give a discharge, no payment in respect of the legacies was ever made to her or on her account. In April, 1848, a demand was made on the executors for payment of the legacy and interest at 4 per cent. into Court, under the Trustees' Indemnity Act, which they refused, and thereupon the bill was filed.

Mr. *Beavan*, for the plaintiff, contended that the legacy was payable with interest at 4 per cent., for that the investment was such that by a variation in the funds the legatee was a loser, and he cited *Whopham* v. *Wingfield*, 4 Ves. 600; *Barton* v. *Cooke*, 5 Ves. 461, and *Wilson* v. *Arrowsmith*, 9 Ves. 180. In the case before Sir Lancelot Shadwell, of *Rimell* v. *Simpson*, on the 18th of November, 1848, an order was made as asked here. The costs ought to be paid out of the testator's estate. Beames on Costs, 13; Daniel's Chancery Practice, 1301.

Mr. *Russell*, and Mr. *Townsend*, and Mr. *Knox*, for the defendants, were not called on.

His Honour said—My impression in this case, (which is not a case of infancy, or being out of the jurisdiction, but one of imbecility of an adult,) is that the executors having in proper time appropriated the legacy, and invested the dividends since the appropriation, it ought not to be disturbed. As to the costs, it is admitted that the legatee has been in this state of imbecility ever since her birth, and therefore must have been so at the date of the will. As this case is circumstanced, without blaming the executors for what they have done or abstained from doing, I think it one where the costs should come out of the estate.

(In Bankruptcy.)

In re Stringer. Nov. 15, 1848.

SURRENDER.—ADVERTISEMENT.

By mistake the advertisement of the days appointed for the surrender of the bankrupt were not inserted in the London Gazette *in the time required by the statute* 5 & 6 *Vict. c.* 122, *s.* 23. *The Court* held, *that the Commissioner had authority to appoint fresh days, and to direct another advertisement to be inserted.*

THE fiat in this case was in prosecution in the Leeds' district, and the adjudication was on the 18th of October. The days appointed for the surrender were the 15th and 29th of November. The 23rd section of the 5 & 6 Vict. c. 122, requires that notice shall be given in the London Gazette, of the adjudication, and of two public sittings for the bankrupt to surrender and conform, "the last of which sittings shall be on a day less than thirty days, and not exceeding sixty days from such advertisement, and shall be the day limited for such surrender." Through the negligence of the messenger, in this case the notices of the adjudication and days of surrender were not advertised until the 3rd of November, whereby the requisitions of the section before mentioned were not complied with. The bankrupt had already surrendered.

Mr. *Aspland* now applied that directions might be given for the appointment of new days for the surrender and for the insertion of ano-

ther advertisement in the Gazette. A similar application had been made to the Commissioner, who doubted whether he had power to accede to it without authority from the Vice-Chancellor, but said that he would be willing to act upon an expression of his Honour's opinion on the point.

His Honour said, that he thought the Commissioner might with perfect propriety appoint fresh days of surrender, and cause a fresh advertisement to be inserted.

Exparte Hookins, In re Gundry. Jan. 24, 1849.

VOLUNTARY BOND.—PROOF.

Proof of three bonds, executed in lieu of a bond for which the consideration was a promise to the father on his death-bed, ordered to be admitted by the Commissioner.

THIS was an appeal from the Commissioner, who had disallowed the proof of three bonds, on the ground that they were executed when the obligor was insolvent, and without any consideration. It appeared that the insolvents were bankers at Bridport, and that the bonds were given by one of them in 1841, in consideration of the release of a former one given to his sister in 1812, and for which the consideration was alleged to be a promise made by the bankrupt to the father on his death-bed.

Russell and *E. W. Cox* for the petitioner; *Swanston* and *Shapter*, for the assignees, citing *Exparte Berry*, 19 Ves. 218.

The *Vice-Chancellor* said, that in *Exparte Berry*, Lord Eldon had not acted on the mere circumstance of insolvency, for in that case it appeared that the security had been given by the obligor, not only with a knowledge of insolvency, but with a view to bankruptcy and of improving the position of the obligees in the event of such bankruptcy happening. Here, however, it was not alleged, either that the obligee had notice of the obligor's insolvency, or of the circumstances under which the bond was executed. And with regard to the bankrupt, he might or he might not have suspected the state of his circumstances, according as his attention might or might not have been drawn to that question. It might be inferred that this fact formed no part of the consideration in giving these bonds, and the bonds might have been given under the circumstances by any person without the remotest intention of benefiting the obligee at the expense of the general creditor. The Commissioner should, therefore, admit the proof of the bonds. His Honour added, that he did not impugn the doctrine laid down in *Exparte Berry*, nor substantially differ from the Commissioner, who had not all the circumstances of the case before him, when he refused to admit the proof.

Feb. 16. *In re London and Manchester Direct Independent Railway Company*, (*Remington's line*)—Petition to wind up and dissolve the company dismissed without costs.

Feb. 16.—*In re the Neath Vale and South Wales Brewery*—Order for transfer to the British District Bankruptcy Court of petition to wind up the company upon proof of service of the notice of this application.

— 16.—*In re Stafford and Peterborough Railway Company*—Stand over.

— 17.—*Cooper* v. *Bloxam and another*—Interim order for injunction continued for a fortnight, the defendant's affidavit not being ready.

— 19.—*Exparte Stewart, in re Stewart, Sloper, respondent*—Action to be brought against respondent in the Exchequer Court, under terms.

— 19.—*Exparte Monk, In re Potter*—Assignees allowed six weeks to remove building materials, they declining to perform the bankrupt's contract.

— 20.—*Attorney-General* v. *Gibbs*—No costs to be allowed to the trustee—Costs of relators to be paid out of the fund—Reference to the Master as to the appointment of new trustees.

— 21. *Exparte Sturges, In re Kernot—Catlin, respondent*—Stand over.

Vice-Chancellor Wigram.

Feb. 15, 16.—*M'Calmont* v. *Rankin* — *Cur. ad. vult.*

— 17.—*In re Smith's Charity and* 52 *G.* 3—Master's report for charity scheme confirmed—Costs to be paid out of the estate.

— 17.—*Davenport* v. *Davenport*—*Cur. ad. vult.*

— 20.—*Moon* v. *Henderson*—Injunction restraining sale of daguerotype copy of engraving granted.

— 17, 19, 20, 21.—*Newman* v. *Hutton and others*—Stand over for plaintiff's consent to an issue at law as to the settlor's sanity.

— 20, 21.—*Douglas* v. *Willes*—*Cur. ad. vult.*

— 21.—*Attorney-General* v. *Wickham*—Order to tax and pay costs: a sufficient sum being left to pay debts, the defendant taking the balance due to him.

Queen's Bench.

(Before the Four Judges.)

The Queen v. *Arkwright.* Mich. Term, 1848.

FOOTWAYS IN CHURCHYARDS, ORDER FOR STOPPING UP.

An order of Commissioners to stop up footways in churchyards must be preceded by a notice, otherwise it will be void.

The 59 *Geo.* 3, *c.* 134, *incorporates the* 2*nd section of the* 55 *Geo.* 3, *c.* 68, *so far as the circumstances of the two matters provided for will admit, but as there is an appeal against the order of the justices under the* 55 *Geo.* 3, *and as there is no appeal against the order of the Commissioners under the* 59 *Geo.* 3, *the Commissioners*

must give notice of their order before making it.

Lord *Denman* stated that this was a case arising upon an order made under the Common Seal of the Church Commissioners, for stopping up a pathway and drive in the churchyard of Bakewell in Derbyshire. The 39th section of the 59 Geo. 3, c. 134, (an act relative to the building and management of churches,) gave the Church Commissioners power to alter the walls and fences, entrances, paths, and footways, &c., of churchyards: "Provided that the same is done with the consent of any two justices of the peace of the county, place, &c., where any such entrance-gate, path, or passage shall be stopped up or altered; and on notice being given in the manner and form prescribed by an act passed in the 55th year of the reign of his present Majesty, entitled," &c.—(the 55 Geo. 3, c. 68,) one of the ordinary Highway Acts. In the present instance, the order of the Commissioners had been confirmed at the Quarter Sessions in the same manner as the order of justices under the 55 Geo. 3 was required to be; but it was admitted that the Sessions had no jurisdiction, and that, so far as they were concerned, the order was void. It was also contended that the order was void as being made before the notice was affixed and published, as required in the 55 Geo. 3, and the Court was of that opinion. By that statute, roads and footway, &c., might be stopped up, provided certain notices were given, and that statute thus described how that notice was to be given. It declared that "a notice in the form in the schedule to this act annexed, shall be affixed by the side of the highway to be stopped, and inserted in a public newspaper in the parish, and for three successive Sundays subsequent to the making of such order; and a like notice shall be affixed to the door of the church or chapel, &c., of the parish in which the road, &c., was, for three successive Sundays subsequent to the making of such order; and such order shall, at the next Quarter Sessions holden after the expiration of four weeks from the day of the publication of the order, be lodged with the clerk of the peace; and the said order shall, at such Quarter Sessions, be confirmed, and by the clerk of the peace enrolled among the records of the said Court of Quarter Session." In the case of *The Queen* v. *Stock*,[a] it was decided that, though this statute was repealed by the 5 & 6 W. 4, c. 50, yet so much of it remained in force as had been adopted into and incorporated with the other statute, and it was then determined that part of the earlier statute which gave an appeal to the Sessions was not so incorporated, and that nothing gave an appeal to the Sessions against the order of the Commissioners. On reference to the order, it appeared to run thus. [His Lordship read it, and it was in the usual form.] It was signed like the order of justices,—it was lodged with the clerk of the peace, and notice was then given that it would be enrolled, unless, upon appeal to the justices at Sessions, it should be otherwise directed. There was, therefore, a notice in manner and form such as was required by the 55 Geo. 3, and it was argued upon these provisions, that the notice might be published after the order was made, and if so, it would follow that the power of the Commissioners was subject to no revision, a result which would give to the Commissioners a most extensive power, the exercise of which, whether affected or not by interest, caprice, or other similar motives, could not be checked, but might be fortified by the consent of two magistrates, and must be obeyed, whatever might be the motive on which it was issued, and whatever the part of the country it might affect. That a case so extreme as this was not likely to happen, was not an answer to the argument that such a construction of the act rendered it possible. If the construction contended for was right, the lodging of the order with the clerk of the peace was inapplicable and useless, for the case already cited showed that there was no appeal against an order after it had been made by the Commissioners. It therefore seemed to the Court that full effect could only be given to the statute by holding that the notice must be given before the making of the order. When the Court recollected that the order of justices, under the 55 Geo. 3, was not until after notice of it had been given, whereas, under this act the order of the Commissioners took full effect from the moment of its being made, the difference in the form of proceeding was merely nominal, and the Court would more substantially follow the provisions of the 55 Geo. 3, which was the model given for the proceedings under the 59 Geo. 3, by saying that the notice must come before the order, than by merely adopting the form given in the former statute. The 59 Geo. 3 said "on notice being given in manner and form." There were three ways of construing the words of this statute:—first, that the order should be made before the notice; next, that it should be made simultaneously with it; and lastly, that it should be made after the notice. According to the rule in the case of *The King* v. *Humphreys*,[a] the construction of the statute must in this instance be in conformity with the reasonable requisites of the case. Here it could not be that the order should be simultaneous, for the notice must be a continuing notice for three weeks; the order could not be after the notice, for the notice was to inform people of the intention to make the order. The order must be after the notice had been given. The order here having been made before the notice, was informal and bad, and the rule must therefore be absolute for quashing it.

[a] 8 Ad. & El. 485.

Drury and others v. *the Queen.* Jan. 26, 1849.

OPERATION OF 11 & 12 VICT. C. 78.—EFFECT OF REVERSAL OF JUDGMENT.

THE plaintiffs in error were indicted for

[a] 10 Ad. & El. 335.

breaking machinery, and sentenced to be transported for ten years. Upon error *coram nobis*, it was admitted for the Crown, that there was no power to award such a punishment, and that the judgment must be reversed; but it was contended that, although the act 11 & 12 Vict. c. 78, had not come into operation when the sentence was passed, it was a declaratory act, and this Court was bound, under the 5th section, either to pronounce the judgment which the Court below should have pronounced, or to remit the case to the Court below to pronounce the proper judgment.

The *Court* considered itself bound by the decisions in *Rex* v. *Ellis*, 5 B. & Cres. 395, and *R.* v. *Bourne*, 7 Ad. & El. 58; and directed the judgment to be reversed, and the prisoners to be discharged in respect of this judgment.

Common Pleas.

Bowden v. *Smith and others.* Jan. 24, 1849.

ACTION AGAINST MAGISTRATES.—STATUTE OF LIMITATIONS.

An action against magistrates on an illegal seizure for county rates must, under the 53 *Geo.* 3, *c.* 51, *be brought within three months, and the* 5 *&* 6 *Vict. c.* 97, *which allows two years for bringing actions under local and personal acts, does not apply to the* 8 *&* 9 *Vict. c.* 21, *as to county rates under that act.*

THIS was a special case after action brought, whether the present action was too late in point of time, under the 53 G. 3, c. 51, it having been commenced more than three months from the date of the goods seized for county rate, or whether the 5 & 6 Vict. c. 97, substituting a period of two years for bringing actions under Local and Personal Acts, applied to the present case? The plaintiff was overseer of Heaton Norris, and had his goods seized on March 14, 1847, under a warrant of distress for non-payment of a rate, (after service of an order of magistrates,) under 8 & 9 Vict. c. 21. He commenced an action of trespass on the 7th August, 1847, against the defendants, magistrates of the county of Lancashire, who had issued the distress warrant. The defendants pleaded "not guilty by statute."

The 8 & 9 Vict. c. 21, appointed a stipendiary magistrate for Salford, Stockport, and Heaton Norris, and provided for payment of his stipend, and making rates to meet the expenses created by the act. It directed those rates to be made by the magistrates of the county, and by section 21 all the powers, authorities, provisions, clauses, and regulations relating to the county rates were to apply to rates levied under that act.

Welsby for the plaintiff; *Cowling* for the defendants.

The *Court* were of opinion that if the 8 & 9 Vict. c. 21, by which the rate was made, had said nothing about limitation at all, the 5 & 6 Vict. c. 97, would not have applied. It did not do so in express terms, but the 21st section included the provisions of the 53 G. 3, c. 51, and thereby restricted the time to three months for bringing actions against magistrates for any act in relation to the levying of the rate in question. The new rate was intended to be put on the footing of a county rate, and the defendants were therefore protected against this action by the lapse of the three months.

Judgment for the defendants.

Shiels v. *Rait.* Jan. 30, 1849.

CITY OF LONDON SMALL DEBTS ACT.—COSTS.

Where a plaintiff resides in Scotland, though carrying on business in London through an agent, he may sue in a Superior Court, and is not liable to be deprived of his costs.

A RULE had been obtained in this cause, calling on the plaintiff to show cause why he should not bring into Court the record in the action, in order that the defendant might be at liberty to enter a suggestion to deprive the plaintiff of costs under the 10 & 11 Vict. c. lxxi., s. 113. The action was brought for goods sold and delivered in the city of London, and a verdict was given for 3*l.* 16*s.* It appeared by the affidavit of the plaintiff, that he lived at Leith, in Scotland, and had not been in London for years, and carried on the business in London by an agent. By the 40th section of the act it is enacted, that the "summons may issue, provided the defendant, or one of the defendants, shall dwell or carry on his business within the city of London, or the liberties thereof, at the time of the action brought; or provided the defendant, or one of the defendants, shall have dwelt or carried on his business therein at some time within six calendar months next before the time of the action brought; or if the cause of action arose therein." And by the 112th, that "all actions and proceedings which before the passing of this act might have been brought in any of her Majesty's Superior Courts of Record, where the plaintiff *dwells* more than 20 miles from the defendant, or where any officer of the Court holden under the provisions of this act shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof, may be brought and determined in any such Superior Court, at the election of the party suing or proceeding, as if this act had not been passed."

Phinn now showed cause against the rule; *Simons* in support.

The *Court* was of opinion that the word "dwells" could not be interpreted to mean anything short of personal residence: had any other meaning been intended, the words "seeking a livelihood," &c., would have been used. As the plaintiff actually resided more than 20 miles from the defendant, he was at liberty to sue elsewhere than in the Small Debts' Court. The rule *nisi* to deprive of costs would therefore be discharged.

Exchequer.

Burnester (*P. O.*) v. *Crompton*. Jan. 22, 1847.

LIABILITY OF MEMBERS OF BANKING CO-PARTNERSHIP.

In scire facias *against a member of a banking co-partnership, a plea, alleging that a* scire facias *upon the same judgment had already issued against another member of the company, was* held *bad, on demurrer.*

THE public officer of the London and Westminster Banking Company, having obtained a judgment against the public officer of the North of England Joint-Stock Banking Company, a *scire facias* issued against the defendant, who was a member of the North of England Joint-Stock Banking Company, calling on him to show cause why execution should not issue against him on the judgment so obtained. The defendant pleaded, that a *scire facias*, founded upon the same judgment, had already issued against another member of the company, and to this plea there was a demurrer.

On the part of the plaintiff it was argued, that all the members of a banking company were liable as upon a joint and several bond, under the 7 Geo. 4, c. 46, s. 13. On the other hand, it was argued that, upon the true construction of the act, there could not be several executions running at the same time; and that before a second execution issued the plaintiff was bound to show by the sheriff's return, that the first was ineffectual. The cases cited were *Fowler* v. *Rickaby*, 2 Man. & Gr. 760; *Esdaile* v. *Lund*, 12 Mees. & Wels. 607; and *King* v. *Hoare*, 13 Mees. & W. 494.

Willes for the plaintiff, and *Manisty* in support of the plea.

The *Court* observed, that the 13th Section of the 7 Geo. 4, c. 46, was probably framed by some person not familiar with the rules of construction adopted by the Courts of Law. It was for the Courts, however, to put such a construction on the section, as would effectuate the intentions of the legislature. One writ having been issued was no answer to a second, unless the first writ produced enough to satisfy the judgment. The hardship arising from the issuing of several writs against members of the same co-partnership would be avoided by payment of the amount of the judgment debt upon the issue of the first writ.

Judgment for the plaintiff on demurrer.

Roberts v. *Tucker*, (Clerk.) Feb. 5, 1849.

CONTRACT WITHIN THE STATUTE OF FRAUDS.

A contract to apply to the Society for providing Funds for the Employment of Curates for an annual grant, must be in writing, and a letter to the bishop stating such intention to apply, is insufficient under the Statute of Frauds.

ON an action by a curate against the incumbent of St. Bololph's, Colchester, for a breach of an alleged contract to apply to the Society for Providing Additional Funds for the Employment of Curates in Populous Places, for an annual grant to be paid to the defendant in augmentation of his stipend, a letter was produced, addressed by the defendant to the Bishop of London, nominating the plaintiff as curate, and stating that the defendant proposed to apply to the society for a grant to be paid to the plaintiff, in addition to the salary the defendant was to give. It was objected at the time, that the contract declared upon was not to be performed within a year, and required to be in writing, to satisfy the Statute of Frauds. It was also objected, that the Letter to the Bishop of London had not such a note or memoranda as satisfied the statute. The learned judge who tried the cause, (Coltman, J.,) thought these objections well-founded, and nonsuited the plaintiff.

A rule to set aside the nonsuit was argued by *Shee*, Serjeant, with *Ogle* and *Collier*, for the plaintiff; and *Peacock* for the defendant.

The *Court* held, that the ruling of the learned judge at the trial was correct on both points. The contract could only be proved by a note in writing, and the letter addressed to the bishop was a mere expression of defendant's intention, but was not evidence of any contract binding between the plaintiff and defendant. Rule to set aside nonsuit discharged.

Wood v. *Perry*. Feb. 10, 1849.

COUNTY COURTS.—SUGGESTION TO DEPRIVE OF COSTS.

Where an action is brought in a Superior Court for a debt under 20l., and a part of the debt only was contracted within the jurisdiction of the County Court, and the defendant is residing within the jurisdiction of such County Court when the action commences, the plaintiff is not entitled to recover his costs, and the Court will allow a suggestion to be entered, under the 129th section of the 9 & 10 Vict. c. 95.

THE plaintiff, a tailor, sued in this Court for clothes delivered to the defendant and repairs done, and recovered a verdict for 6*l.* 7*s.* A rule was afterwards obtained to enter a suggestion to deprive the plaintiff of costs, under the 9 & 10 Vict. c. 95, s. 129. The affidavit upon which the rule was granted was in the usual form, and showed that the defendant resided within the district of the Brompton County Court, at the time of the action brought. In answer to the rule it appeared, that a portion of the debt for which the action was brought, was contracted beyond the district of the Brompton County Court, and it was contended, that this circumstance brought the case within the provisions of the 128th section, under which the Superior Courts have concurrent jurisdiction with the County Court, "where the cause of action did not arise wholly or in

some material part within the jurisdiction of the Court within which the defendant dwells or carries on his business at the time of the action brought."

The *Court*, however, after taking time to consider, held, that the circumstance of a part of the debt for which the plaintiff sued having been contracted in the jurisdiction of another court, and not of the Brompton County Court, did not give the Superior Courts a concurrent jurisdiction, and that the plaintiff was only entitled to judgment for the amount of the verdict and no costs.

Rule absolute to enter a suggestion to deprive the plaintiff of costs.

Feb. 15.—*Standish* v. *Ross*—Rule absolute to enter verdict by arrangement.

— 16.—*Nunn* v. *Lomer* — Judgment for plaintiff.

— 16.—*Morley* v. *Attenborough*—Rule absolute to enter nonsuit.

— 17.—*Newry and Enniskillen Railway Company* v. *Combe, jun.*—Judgment for the defendant on plaintiff's demurrer to plea.

— 20.—*Williams* v. *Miles* — Demurrer to plea for not setting out the names of members of the society, allowed.

— 20.—*Leeds and Thirsk Railway Company* v. *Fearnley*—*Cur. ad. vult.*

Exchequer Chamber.

The Baron de Bode v. *The Queen.* Feb. 2, 3, & 7, 1849.

AFFIRMANCE OF THE JUDGMENT OF THE QUEEN'S BENCH.[a]

This case, which was tried at Bar so far back as the month of January, 1844, has now been finally decided by a Court of Error, after a lengthened learned and elaborate argument. The case may be thus briefly stated:—A certain sum of money had been raised by the French government, according to a treaty between the British and French governments, for compensating British subjects who had been injured or sustained damage by the conviction or seizure of their property by the French revolutionary government in 1793, and an act of parliament passed which provided for the distribution of the money, and under this statute (59 Geo. 3, c. 31,) the plaintiff claimed.

The *Court of Error* was of opinion that the statute had disposed of the whole fund, and had directed how it should be applied, and that the plaintiff had no right to any part of that fund. The Court of Queen's Bench had, therefore, given a proper judgment, and that judgment must be affirmed.

[a] 28 L. O. 491,

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Law of Attorneys.

[For the previous Sections of this Series of the Digest in the present Volume, see

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AGREEMENT.

See *Jurisdiction.*

ARTICLED CLERK.

Affidavit of execution of contract.—*Enrolment.*—An articled clerk had neglected to file the necessary affidavit within six months; but the omission "had arisen from inadvertence only:" *Held*, that this was not a sufficient ground for releasing him from the consequences, under the 6 & 7 Vict. c. 73, s. 9. *In re Benson*, 10 Beav. 435.

AUTHORITY.

1. *Supplemental proceedings.*—Four plaintiffs instituted an original and two supplemental causes, and three of the same plaintiffs, on a subsequent abatement, filed a supplemental bill by a new solicitor, making the other plaintiff a defendant, who also appeared by another solicitor. On a petition in the four causes, the solicitor in the last supplemental suit, and not the solicitor on the record in the first three causes, was held to be entitled to appear for the plaintiffs. *Ward* v. *Swift*, 6 Hare, 309.

2. *Continuance of.*—Where a defendant has been taken in execution upon a judgment, the attorney for the plaintiff has no authority to give a discharge; he continues to be attorney after execution for the purpose of receiving the money only. *Connop* v. *Challis and another*, 36 L. O. 253.

3. *Action on the case.*—*Pleading.*—An allegation in a declaration that *C. D.*, an attorney, without the authority of *A. B.*, entered an appearance for him, and took upon himself to defend an action brought against *A. B.*, and that judgment and execution followed, and that *A. B.* was thereby injured in his credit and character, is bad, as not disclosing a legal cause of action. *Westaway* v. *Frost*, 36 L. O. 490.

CLERK.

Grant of annuity.—Where a solicitor executed an annuity deed in favour of his clerk, duly stamped and attested, it will not be set aside for want of consideration, nor on a presumption that it was signed by mistake. *White* v. *Crisp*, 37 L. O. 276.

COSTS OF STOP ORDER.

Taxation.—The mortgagee of a fund in

Court is entitled to the expense of obtaining a stop-order on the fund in a case in which he is empowered by the mortgage deed to apply to the Court for that purpose, but such expenses are not allowed by the Taxing Master under the common order to tax the costs of the mortgagee. *Waddilove* v. *Taylor*, 6 Hare, 307.

COSTS OF PROSECUTION.

Unqualified practice.—A society of attorneys prosecuted an individual under 6 & 7 Vict. c. 73, s. 2, for practising as an attorney, he not being one. He removed the indictment by certiorari, but was convicted. The prosecutors applied for costs under the 5th W. & M. c. 11, s. 3: *Held*, (Coleridge, J., dissentiente,) that they were, within the words of that statute, parties grieved or injured," and were therefore entitled to costs. *The Queen* v. *Buchanan*, 37 L. O. 320.

See *County Court*.

COSTS OF WITNESS.

Rule granted, calling on the plaintiff's attorney to pay the costs to a witness which had been allowed on the taxation, and paid by the defendant as costs in the cause. *Shaw* v. *Johnson*, 37 L. O. 322.

COUNTY COURT.

Costs.—The 9 & 10 Vict. c. 95, s. 91, prevents an attorney from recovering from his own client, in respect of business done in the County Court, anything beyond what he can recover from the opposite party.

The section applies to everything done by the attorney in that Court, whether preliminary business or otherwise. *Exparte an attorney, In re Greaves* v. *Clifford*, 36 L, O. 285.

DELIVERY OF BILL.

Provisional committee.—The delivery of an attorney's signed bill of costs to a member of a projected railway provisional committee, and not at any public office of the said projected railway company, is not such a delivery within the 6 & 7 Vict. c. 73, to another member of the same committee, as to make the latter liable as defendant in an action for the amount of such bill. *Edwards* v. *Lawless*, 37 L. O. 33.

DELIVERING UP ACCOUNTS.

The old practice must be followed to compel a solicitor to deliver over documents to his client, where the application is "in the matter;" and the 12th order of August, 1841, is inapplicable to such a case. *Taylor, In re*, 10 Beav. 221.

ENROLMENT OF ARTICLES.

See *Articled Clerk*.

JURISDICTION.

Agreement.—Performance of an agreement to compromise a suit, entered into by the solicitor for the plaintiff, and the solicitor for the defendant, by which the latter agreed to pay the plaintiff's costs to the former, enforced by order made in a summary way. *Gilbert* v. *Cooper*, 15 Sim. 343.

See *Taxation*, 1.

LIABILITY FOR BAILIFF'S FEES.

The attorney, and not the principal, is the party liable to the sheriff's bailiff for fees payable upon a *ca. sa.* *Maile* v. *Mann*, 36 L. O. 370.

LIEN.

The lien of a solicitor in the cause held not to entitle him to withhold an original order of the Court in which there was an accidental error that required correction. *Bird* v. *Heath*, 6 Hare, 236.

NEGLIGENCE.

1. In an action on the case, against an attorney for negligence, the Court held that the cause of action arose at the time the negligence occurred, and not at the time the negligence was discovered, or the consequential damages ensued. *Smith* v. *Fox*, 6 Hare, 386.

2. *Discovery.—Demurrer.—Statute of Limitations.*—Demurrer to a bill of discovery, in aid of action on the case for negligence, allowed: it appearing by the bill that the cause of action had not arisen within six years before the suit. *Smith* v. *Fox*, 6 Hare, 386.

Case cited in the judgment: Hindman v. Taylor, 2 Bro. C. C. 7.

3. When action not maintainable for a defect in preparing a deed.—*Manning* v. *Wilkin*, 37 L. O. 194.

4. *New trial.—Undefended action.*—Where, by the attorney's negligence, an action was tried as undefended, the Court granted a rule *nisi*, upon an affidavit of merits, for a new trial, on the attorney's paying the damages and costs into Court within a week. *Coe* v. *Howard*, 37 L. O. 279.

PALACE COURT ADMISSIONS.

Mandamus to the judges of the Palace Court to show cause why an attorney of the Superior Courts should not be admitted in the Palace Court, pursuant to 6 & 7 Vict. c. 73, s. 27.—*Reg.* v. *Brent, Steward of the Palace Court*, 37 L. O. 257.

PAYMENT BY NOTE.

A client gave his solicitor a promissory note, and signed a memorandum of settlement. The Court was strongly inclined to think that, under the circumstances, it ought to be deemed to amount to payment. *In re Harper*, 10 Beav. 284.

PER CENTAGE ON FUND.

A lady resident in Ireland agreed with an Irish solicitor that, if he would employ a solicitor in London to take out for her certain letters of administration in England, which were necessary to complete her title to a fund in the Court of Chancery in England, and afterwards procure the fund for her, he should receive a commission of 10 per cent. upon the whole amount of the fund, and also be reimbursed what he should pay to the London solicitor.

Held, that the agreement was contrary to

policy, and therefore could not be enforced. *Strange* v. *Brennan*, 15 Sim. 346.

PRIVILEGED COMMUNICATIONS.

1. *Production of documents.*—The question in the cause was, whether two of the defendants had taken a conveyance of an estate from the principal defendant, with notice of a certain proceeding in the Ecclesiastical Court, in which the bill alleged that they had acted as his solicitors. The principal defendant, by his answer, denied that they had acted as his solicitors in that proceeding, but the two other defendants, by their answer, insisted on withholding the production of certain letters in their possession, as being privileged communications between the principal defendant and themselves while acting as his solicitor. On a motion for production of the documents, *held*, that the plaintiff was not entitled to read the answer of the principal defendant in reply to that claim of privilege; but the motion was ordered to stand over, with leave to the plaintiffs to amend their bill for the purpose of pointing that defendant's attention to his relation to the co-defendants in reference to the particular documents, and upon his answer to their amended bill, production was ordered. *Blenkinsopp* v. *Blenkinsopp*, 2 Phill. 607.

2. The title of *R.* to an estate having been discovered by *B.*, *R.* agreed to give *B.* a moiety of the estates for his exertions, &c., and *B.* was to prosecute the claim at his own risk. *B.*, through his solicitor, afterwards took the opinion of counsel upon the case, and instituted a suit of *R.* v. *R.* in the name of *R.*, under a power of attorney given by *R.* for that purpose: *Held*, in a suit by *R.* to set aside the transaction, that *B.* was bound to produce the case and opinion, and the documents in *R.* v. *R.* for *R.*'s inspection, the same not being privileged.

In the same case, *B.*, wishing to purchase the remaining moiety, procured his solicitor to write him a letter to show to *R.*, and calculated to induce him to sell. *R.* agreed to sell: *Held*, in a suit to set aside the sale, that the letter was not a privileged communication. *Reynell* v. *Sprye*, 10 Beav. 51.

3. A defendant, before answer, became bankrupt. He put in his answer, stating that certain books and letters were in the possession of his solicitor, who claimed a lien on them, and that he could not obtain possession thereof. The Court ordered the defendant to produce them, with liberty to apply in case of need. *Rodick* v. *Gandell*, 10 Beav. 270.

4. A bill was filed against *A.* and *B.*, (a solicitor,) to set aside a conveyance from *A.* to *B.*, made pending a suit in the Ecclesiastical Court, in order to defeat the plaintiff's right. *B.*, by his answer, admitted the possession of certain documents, and stated the suit had been wholly conducted by a proctor, and that he, *B.*, had acted as a solicitor for *A.* in that suit, so far as *A.* had employed a solicitor therein, but he made no case for exemption from production. On a motion for production, *B.* was allowed to file an affidavit in aid, and he thereby stated, in addition, that he had been, and still was, *A.*'s solicitor, so far as he had a solicitor, and was consulted by him as regarded the proceedings in the Ecclesiastical Court; that the letters in his possession were written by *A.* to him, as such his solicitor, and that the same were private and privileged communications made by *R.* to *B.*; that cases for the opinion of counsel were prepared by him, as such solicitor of *A.*, and the opinions taken, for the purpose of advising *A.* and *B.* with regard to the proceedings in the Ecclesiastical Court; and that the documents relating to the Ecclesiastical Court came into his possession as solicitor of *A.*: *Held*, that, upon the answer alone, the documents were not privileged, but that on the answer and affidavit the plaintiff was not entitled to their production. *Blenkinsopp* v. *Blenkinsopp*, 10 Beav. 277.

5. A solicitor is privileged from answering interrogatories relating to transactions which came to his knowledge in his professional character, though he afterwards became interested in the property in question. *Chant* v. *Brown*, 37 L. O. 296.

PROCURATION FEES.

See *Per Centage on Fun.*

PROVISIONAL COMMITTEE.

See *Delivery of Bill.*

RAILWAY SOLICITORS' COSTS.

See *Taxation*, 1.

RE-ADMISSION.

Where an attorney swears unqualifiedly that he has not practised since the expiration of his last certificate, and it is proved that he has practised at the Quarter Sessions, the renewal of his certificate will be refused. *In re Mark Fothergill*, 37 L. O. 300.

SIX CLERKS.

Substitution for.—The Order of the 18th October, 1842, is intended to substitute the solicitor for the six clerks, and not to give the solicitor a right to insist, as against his client, upon acting in the cause until removed by the order of the Court. *Ward* v. *Swift*, 6 Hare, 309.

STOP ORDER.

See *Costs of Stop Order.*

STRIKING OFF THE ROLLS.

Where an attorney is imprisoned for felony and according to the regulations of the magistrates, cannot be served with the rule *nisi* for striking him off the Roll, the Court will enlarge the rule; but service on the keeper of the prison will not be good service. *In re Scott*, 37 L. O. 242.

TAXATION OF COSTS.

1. *Jurisdiction on petition to open compromise.—Pressure.—Railway.*—A shareholder and member of the managing committee of a provisionally registered railway company *held* entitled to an order, on petition, for delivery

and taxation, after payment, of the bills of the solicitors employed by such committee.

A compromise of a solicitor's claim for costs, if effected under circumstances of pressure upon the client, does not oust the jurisdiction of the Court to tax the bills upon petition. *Ex parte Bass, in re Stephen*, 2 Phill. 562.

Cases cited in the judgment: Horlock v. Smith, and Waters v. Taylor, 2 Myl. & C. 495, 526; In re Tryon, 7 Beav. 496; In re Wells, 8 Beav. 416; In re Fyson, 9 Beav. 117; In re Lees, 5 Beav. 410.

2. *Counsel.*—In the taxation of costs as between solicitor and client, the Taxing Master had disallowed the costs of two counsel in several applications to the Court. The Master, having used his discretion, and not proceeded on any general principles, a petition to review the taxation was dismissed with costs. *Friend* v. *Solly*, 10 Beav. 329.

3. *Brief for counsel.*—Brief of pleading prepared for counsel after publication and before the cause had been set down, and which became useless in consequence of a compromise before hearing, disallowed on taxation as between solicitor and client. *Friend* v. *Solly*, 10 Beav. 329.

4. *Retainer.—Short-hand notes.—Counsel.—Consultation.*—Special retainer disallowed in the taxation of costs as between party and party.

Transcript of short-hand-writer's notes used on appeal disallowed on a taxation between party and party.

The general rule is, that the costs of two counsel only are allowed upon a taxation between party and party.

In the absence of sufficient reason, only one consultation ought to be allowed under the 120th Order of March, 1845, and the Taxing Masters certified that the fact of one counsel being brought specially from another Court is not a ground for allowing an extra number. *Smith* v. *Earl of Effingham*, 10 Beav. 378.

5. *Brief of pleadings.—Counsel.*—A charge in a solicitor's bill for "attending a great many times" is too vague, and on taxation the charge will be disallowed. The costs of an abstract of a deed prepared to accompany a case submitted to counsel, disallowed, under the circumstances. A considerable portion of a charge for the attendance of a solicitor in town, at the request of his client, disallowed, on the ground that the solicitor had failed to prove that the whole time was required for the business.

Where a solicitor makes against his client any charge not authorised in the usual and regular mode of proceeding, the burden of proof is upon the solicitor; and, in a case where for the interest of a client the solicitor had advanced money to put in the answer of a co-defendant, it was disallowed, on the ground that it was not clearly made out that the client authorized or acquiesced in it.

Brief of pleadings before the case was at issue disallowed.

Fee of counsel for settling a special affidavit for leave to amend disallowed in a taxation between solicitor and client. *In re Pender*, 10 Beav. 390.

6. *Action at law.*—Upon a taxation in equity, a question arose as to the liability of the client to pay the costs of a consolidated action at law. Leave was given to the solicitor to bring his action to try the question. *In re Anderson*, 10 Beav. 399.

See *Costs of Stop Order.*

TAXATION AFTER PAYMENT.

1. Payment of a bill of costs is, *primâ facie*, an admission of its correctness, and the client is bound to prove "special circumstances" to authorise its taxation. Such special circumstances are usually pressure, as where an immediate payment is required, at a time when it would be very inconvenient to the party paying, that any delay should occur in the completion of the business; and secondly, error or overcharge in the bill. If the overcharges evidence fraud, very slight, (if any,) circumstances are necessary to induce the Court to order a taxation. *In re Harding*, 10 Beav. 250.

2. An application for taxation of a bill, made 14 months after its delivery, and before payment, refused, there being no sufficient "special circumstances." *In re Harper*, 10 Beav. 284.

3. Petition to tax a bill of costs, paid without pressure, nine days after its delivery, discharged with costs. *In re Drew*, 10 Beav. 368.

See *Payment by Note.*

TAXATION AFTER A YEAR.

The lapse of 12 months between the time of payment of a bill of costs and the presentation of a petition for its taxation, precludes taxation under the act. *In re Harper*, 10 Beav. 284.

TAXATION BY THIRD PARTIES AFTER PAYMENT.

Semble, that under 6 & 7 Vict. c. 73, (ss. 37, 38, and 41,) it is necessary to show special circumstances when third parties apply for an order to tax a solicitor's bill after it has been paid. *Re Emmanson, Exparte the Ambergate, Nottingham, and Boston, and Eastern Junction Railway Company*, 37 L. O. 235.

UNQUALIFIED PRACTITIONER.

See *Costs of Prosecution.*

WARRANT OF ATTORNEY.

Attestation.—A warrant of attorney to confess judgment was attested by an attorney as follows:—"Signed, sealed, and delivered by the said Henry Hall, in my presence, and I declare myself to be attorney for the said Henry Hall, and that I subscribe my name as such attorney.

"George Overton, Solicitor, Merthyr."

Held, that the attestation was sufficient, and that the words of the act of parliament had been sufficiently complied with, *Goy* v. *Hall*, 37 L. O. 193.

WITNESS.

See *Costs of Witness.*

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SATURDAY, MARCH 3, 1849.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

THE MARSHALSEA AND PALACE COURTS.

THE Attorney-General has formally announced that, after communicating with the Lord Steward, within whose department the matter peculiarly lay, he intended to bring in a bill to remedy the evils complained of in respect of the Palace Court. After the startling disclosures contained in the returns to the House of Lords, an abstract of which was submitted to our readers a fortnight ago, (*ante*, p. 308,) it was impossible to suppose that the attention of the responsible servants of the Crown should not be directed to the subject, and some measure of a remedial character suggested. The public are still in the dark, however, as to the nature of the proposed alteration. It is important, therefore, that those in authority should be speedily and explicitly informed what the public, and those who immediately represent the public in all things connected with the administration of justice, really require and demand in reference to this matter.

The Palace Court is objectionable chiefly, if not solely, because those who become suitors in it—whether voluntarily or compulsorily—are compelled to select their advocates and legal advisers from a small number of professional men, appointed to their places for a pecuniary consideration, without regard to their experience or qualifications. It is not suggested, that the judge who presides in this Court is not pains-taking and competent, that the officers are not diligent, that the machinery of the Court is peculiarly cumbrous, or the fees exorbitant. In short, no one says that justice is not properly, honestly, and impartially administered in the Palace Court. What is complained of—and with enough reason—is, that the conduct of all the causes brought under the cognizance of a jurisdiction comprehending a great portion of the metropolis, is necessarily—and frequently against the will of the suitors—entrusted to a body which numbers no more than ten; *i. e.*, four barristers and six attorneys!! Whilst the amount of business disposed of in the Palace Court was believed to be trifling, or even moderate, the grievance, though felt and understood by the profession, was endured; but when it is found that one of the results of heedless legislation has been to quadruple the business of the Court, within a period of two or three years, the magnitude of the evil is appreciated, and the demand for a reform has become irresistible.

The question remaining to be discussed is, how that reform can be effected in a manner most beneficial to the public and least injurious to those whose interests must be affected in a greater or less degree by any change altering the constitution of the Court? We come unhesitatingly to the conclusion, that all that is required is, that the monopoly should be got rid of, and the Court thrown open to both branches of the profession. The abolition of the jurisdiction without more, would be a positive injury to the public. In despite of its exclu-

sive character, the Palace Court has been forced into importance and something like popularity, by reason of its relative, rather than its positive, merits and advantages. The County Courts Act, whilst it closed the doors of the Courts at Westminster to the humbler and most numerous class of suitors, established a number of tribunals so inconvenient, inefficient, and unsatisfactory, that ingenuity was taxed to find how a resort to them might be avoided. The jurisdiction of the Palace Court was not, like that of the Superior Courts at Westminster, superseded as regarded actions under 20*l*., by the County Courts Act, and as the system of procedure in the Palace Court was free from some of the most glaring and annoying defects of the County Court system, suitors ran to the Palace Court to escape from the County Courts, not because the Palace Court was approved of, but because the County Court was odious. The abolition of the Palace Court would, therefore, be the opposite to a boon. It would be to say to the small tradesman, you must either give up your claim upon a debtor altogether, or enforce it through the instrumentality of a tribunal where you are obliged to attend in person, at an expense of time, and sometimes of money, beyond the value of the debt, and where for want of professional assistance you are subject to more than the ordinary uncertainty of the law. If the jurisdiction of the Palace Court is to be extinguished, the County Courts should be placed on such a footing that the portion of the profession in whom the public can and ought to have confidence, may practise in those Courts without discredit, and with the assurance of a reasonable and moderate remuneration for their services.

As to the officers of the Palace Court, whose emoluments would be affected by throwing open the Court to the profession generally, those gentlemen have paid for their offices, and justice demands that they should be fully compensated for any loss sustained by their abolition. We protest, however, against a repetition of the course pursued time after time heretofore, as regards the officers of this Court, by paying them for anticipated losses which, in some cases, turned out to be purely imaginative, and at the same time preserving the monopoly, the alleged interference with which was the foundation of the claim for compensation. The establishment of the various Courts of Request in the Metropolitan Districts was from time to time made the ground of granting compensation to the officers of this Court, and so recently as the year 1844, when Lord Brougham's famous Act passed, giving immunity to fraudulent debtors, (7 & 8 Vict. c. 96,) those fortunate individuals who had purchased places in the Palace Court obtained large sums by way of compensation, though it now appears that whilst the number of writs issued from the Court in 1845 was only 1,526, the number in 1848 had increased to 6,535, and the number of causes tried and the fees of all the officers were augmented in a similar proportion. It is to be hoped the officers of the Palace Court will now be compensated once for all!

THE NEW REGISTRATION OF DEEDS BILL.

The Bill of Mr. *Henry Drummond*, ("with him Mr. *Wood*,") is described as "a Bill to Facilitate the Transfer of Real Property," and it is stated in the preamble, that it is expedient to provide for the Registration of Documents Relating to, and for Facilitating the Transfer of, Real Estates in England and Wales.

The bill provides for the appointment of a "*Registrar of Deeds in England*," and one or more than one Assistant Registrar. The fees for registering are left blank in the bill. The duties and responsibility of the Registrar are thus stated in the 7th clause:

That the registrar shall receive all documents hereby authorized to be registered, and shall register the same according to the provisions of this act, and shall, at the option of the party delivering the same, or his agent, to be expressed in writing, either retain the same, or re-deliver the same when registered to such party or his agent; and the registrar shall enter upon the registry all acts and transactions which under the provisions of this act shall be done or transacted by means of the registry only, or partly by means of the registry, and partly by means of other documents: and when any party who shall have delivered documents to the registrar, for registration, or who shall have done or transacted any matter or transaction wholly or partly by means of the registry, shall, by himself or his agent, require a copy of the registry relating to such documents or such matter or transaction, or of a part thereof respectively, the registrar shall deliver to such party or his agent the copy so required; and all entries on the registry, and all acts done with respect thereto, and all copies which shall be given out, shall be made, done, and given according to the form and authenticated in manner and at or within the time prescribed by the rules of the registry for the time being; and the respective matters of busi-

ness aforesaid shall be done or transacted in the manner and at or within the time prescribed by the rules of the registry for the time being: Provided always, that the registrar shall not be responsible for any loss or damage which shall happen to documents, provided they shall have been received in such manner and at such time, and placed when received in such custody, as the said rules for the time being shall prescribe; provided also, that in case any document shall be re-delivered as aforesaid a fair copy thereof shall be retained by the registrar; provided also, that it shall be lawful for any person who shall avail himself of the registry to deposit with the registrar an attested copy of such document instead of the original, but in such case the original shall be produced to the registrar, in order that he may satisfy himself of the correctness of such copy, and in case of an attested copy being left with the registrar instead of an original document, he shall put upon the original document a memorandum to show that it has been so produced, and that an attested copy thereof has been left, with such other particulars as he shall deem necessary.

Authenticated copies of registered documents are to be received in evidence.

The deposit of maps is thus provided for:

That every person who shall propose to register any land or incumbrance shall, on depositing the documents relating thereto which he shall propose to register, deposit therewith one or more than one map, as circumstances may require, of such lands, with such schedule and book of reference thereto as shall be necessary, in order to specify such lands and the divisions thereof, if any, and the acreage thereof, and such schedule and book of reference may also contain a statement or description of mines, commons, rights of way, rights of water, rights of light, and other easements, privileges, and appurtenances belonging to or enjoyed by the owner of such land in respect thereof, and shall contain a statement or description, so far as the party can make the same, of mines, commons, rights of way, rights of water, rights of light, and other easements, privileges, and appurtenances belonging to or enjoyed by any other person in, over, upon, or out of such land; and every such map as aforesaid shall be upon the same scale as the maps made under the direction of the Commissioners for the Commutation of Tithes in England and Wales are made upon; and every such schedule and book of reference shall be made conformably to the rules of the registry; and the registrar shall have power to require alterations or additions to be made therein, or altogether to require the same to be made anew, when and in case he shall consider it necessary so to do, regard being had to the provisions of this act and the rules of the registry; and the registrar shall cause all maps, schedules, and books of reference deposited as aforesaid to be labelled, indexed, put away, and kept, and from time to time produced in such manner as the objects of this act, and the rules of the registry shall require or direct.

Accidental or clerical errors may be corrected, and the following are the regulations relating to the *searches* of the registry:

That, on the requisition of any person who by himself or his agent shall state in writing the particulars hereinafter mentioned, or such other particulars as the registrar shall deem sufficient, the registrar shall make such search as shall be therein required, and deliver to such person or his agent an authenticated statement or copy of the result of such search, in manner and at or within the time prescribed by the rules of the registry for the time being; and the person making such requisition shall, either by himself or his agent, state generally, in such manner as the said rules shall prescribe, the object and reason of making such requisition, and the names of the lands or incumbrances, and the names of the parties, so far as he can state the same respectively, in respect of which he requires the search, and shall, if so required by the registrar, give to him such prima facie evidence that such party has some estate, right, title, interest, claim, or demand in, to, or upon the land or incumbrance mentioned in such requisition; and prior to the search being made, the person making such requisition shall pay or deposit such sum of money to or with the registrar as under the provisions of this act and the rules of the registry he shall be authorized to demand as a prepayment, either in full or on account, according to circumstances, of the charges for and attending such search and the statement of the result thereof.

That, except under the authority of an order of Court, the registry shall only be searched, and copies or extracts shall only be given, and documents shall only be received by the registrar, or be taken from the registry, and entries on the registry shall only be made, and the books of the registry shall only be removed from it, at such times, in such manner, and for such purposes as the provisions of this act and the rules of the registry for the time being shall authorize.

The future transfers of registered land is proposed to be effected in the following extraordinary manner,—something after the fashion of transferring Stock in the Government Funds:—

All transfers of lands registered under the provisions of this act shall be made either by a document which shall be registered, or by the transferror signing in the books of the registry an acknowledgment of the transfer, and the consideration (if any) on which such transfer is founded, and a receipt for the money (if any) paid as the consideration for such transfer; and such transfer or signature as afore-

said, with such receipt as aforesaid, if necessary, shall be effectual to pass to the transferree the whole estate and interest of the transferror as appearing on the registry in the land transferred, and the same shall thenceforth, subject to the provisions of this act, be free from incumbrances, except registered incumbrances, and quit rents, land tax, tithes, perpetual rentcharges, and other similar customary payments, heriots, outgoings, and services, (if any,) and any covenants, rights of way, and other easements to the benefit of which any other person may be entitled in such land; and when and in case such transfer shall transfer land which shall appear by the registry to be of freehold tenure, and held for an estate in fee simple, free from incumbrances, except as aforesaid, the transferree shall be entitled to hold and enjoy and dispose of the same for an estate in fee simple, or for such less estate as shall be transferred to him, free from all adverse claims, and all charges, debts, and incumbrances, except and subject as aforesaid; and when and in case such transfer shall transfer land which shall appear by the registry to be of customary or copyhold tenure, and held for a customary or copyhold estate in fee simple, free from incumbrances, except as aforesaid, the transferree shall be entitled to hold and enjoy and dispose of the same for a customary or copyhold estate in fee simple, as the case may be, or for such less estate as shall be transferred to him, free from all adverse claims, and all charges, debts, and incumbrances, except and subject as aforesaid; and when and in case such transfer shall transfer land which shall appear by the registry to be held on lease free from incumbrances, except registered incumbrances, and except lessee's rent and covenants, the transferree shall be entitled to hold and enjoy and dispose of the same for the estate or interest for which the same is held, or for such less estate as shall be transferred to him, free from all adverse claims, and all charges, debts, and incumbrances, except and subject as aforesaid: Provided nevertheless, that transfers of customary or copyhold lands under the provisions of this act shall be subject to the same fines, fees, and expenses as they would have been subject to if made by surrender according to the custom of the manor of which such lands are holden: Provided also, that leasehold lands which are or shall be subject to any condition or restriction against assignment, sub-letting, or other alienation, either by operation of law or act of the party, without licence of the lessor, shall not be transferred under the provisions of this act without such licence as would be necessary in case they were transferred without reference to the provisions of this act.

Transfers and discharges of incumbrances are to be discharged by mere entry on the register.

That all transfers and discharges of incumbrances upon registered land may be made either by a registered document, or by the party making such transfer or giving such discharge signing in the books of the registry a transfer or discharge, or an acknowledgment of a transfer or discharge, and a receipt for principal money and interest due to the party making such transfer or giving such discharge; and such transfer, discharge, or signature, shall be effectual to pass to the transferree in the case of transferred incumbrances, the whole estate and interest of the transferror in the incumbrance transferred, and the land affected thereby, or so much thereof as shall not be excepted, and all other securities for the same incumbrance, or so much thereof as shall not be excepted, and in the case of discharged incumbrances to exonerate the registered land which shall be affected thereby from the same, or from so much thereof as shall not be excepted; and all powers by this act given to an incumbrancer may be legally and effectually exercised by the executors, administrators, or assigns of such incumbrancer, and in cases of incumbrances appearing in the registry to belong to more persons than one on a joint account, by the survivors or survivor of them, or his assigns, or by the executors or administrators of the last survivor, or their assigns.

And future incumbrances may in like manner be created by a simple entry on the register. Thus:—

That from and after the day on which any land shall be registered every estate or incumbrance which shall thenceforth be created on such land or transferred shall be created or transferred only by a registered document, or by a registered acknowledgment under the bond of the owner of such land, and shall, as regards subsequent purchasers or transferrees for money or other valuable consideration, and incumbrancers, affect only the specific land mentioned in such document or acknowledgment, and no other; and no such purchaser, transferree, or incumbrancer shall be affected by notice, otherwise than notice on the registry of any prior estate, charge, or incumbrance, but in this respect all equitable and other doctrines of notice shall have no operation, and shall be altogether disregarded; and all unregistered transfers, charges, and incumbrances shall be deemed fraudulent and void as against such purchasers for money or other valuable consideration, and as against such subsequent incumbrancers: Provided always, that nothing herein contained shall prejudice the rights or claims, as against the owner or transferror of any land or incumbrance, of any party who has or shall have any right to or claim upon any such land or incumbrance, but shall only prejudice such rights or claims as aforesaid as upon or against the land or incumbrance so transferred: Provided also, that entry on the registry shall be full notice to all persons of all transactions registered from the date of the entry thereof respectively.

Transfers of incumbrances and their discharge are to be effected in the like simple form. As thus:—

That upon the transfer of any such incumbrance, estate, or interest as aforesaid, such transfer shall be registered by the transferror, or in default thereof may be registered by the transferree; and upon any such incumbrance, estate, or interest being discharged, or ceasing to be a charge upon such land, the discharge or cesser thereof shall be registered by the party entitled thereto.

When existing incumbrances are discharged, the land to be vested in the owner; and incumbrances ceasing by operation of law to be extinguished on the registry by the owner.

The title of an owner after *thirty* years' possession, is not to be questioned, provided that certain notices are given. This clause we state fully:

That if the owner of any land shall have been in the undisturbed seisin or possession or receipt of the rents and profits of any land, either by himself or by any trustee on his behalf, for a period of thirty years immediately preceding the day on which he shall tender his documents of title relating to such land for registration, or if the owner of any land and his predecessor or predecessors in title shall have been successively in the undisturbed seisin or possession or receipt of the rents and profits of any land, either by themselves or by any trustee on their behalf, for the like period of thirty years, the said owner shall be entitled to register himself as absolute owner of the said land, and on such registry being completed he shall from thenceforth to all intents and purposes be deemed to be absolute owner of the said land, and his title shall not in future be questioned or disputed: Provided always, that within six calendar months previous to the day on which such owner as aforesaid shall tender his documents for registration, he shall have three several times, and at intervals of not less than fourteen days, inserted in the *London Gazette* a notice of his intention to register such land as absolute owner under the provision lastly hereinbefore contained; and in case no objection shall be made to the complete registration of such land within three calendar months after the insertion of the last of such notices, or in case any such objection shall be made, by notice in writing served on the said owner, and the same shall not be prosecuted by action or suit in a Court of competent jurisdiction within the like period of three months, or in case such objection shall be made but shall be declared invalid by a Court of competent jurisdiction, then from and after the expiration of the said period of six calendar months in case no objection shall be made as aforesaid, or being made shall not be prosecuted as aforesaid, or immediately after the time when by judgment or decree of a Court of competent jurisdiction such objection shall be declared invalid, it shall be lawful for the said owner to require the registry of such land to be completed, and on such completion he shall be deemed to be such absolute owner as aforesaid: Provided also, that every notice which shall be inserted as aforesaid in the *London Gazette* shall contain a general description of or reference to the lands to which the same applies, and shall state, as the fact may be, whether it is the first, second, or third time of its being inserted: Provided also, that on the completion of the registration of such land, so much of each printed copy of the *London Gazette* as applies to such land shall also be registered.

The following, also, are to be the extraordinary powers implied in incumbrances created after the passing of this act.

That every incumbrance that shall be created after the registration of any land so as to affect such land, shall, if the same be a charge of principal money, unless the contrary shall be declared on the registry of such incumbrance, or unless different arrangements shall be made between the parties, and declared on such registry, imply and be construed at law and in equity as containing a covenant with the incumbrancer, and his executors, administrators, and assigns, binding the owner of the land, and his real and personal representatives, to pay the money secured by such incumbrance on the day named, with legal interest, or such interest less than legal interest as shall be specified, payable by half-yearly portions, and shall also, unless the contrary be declared, as aforesaid, or different arrangements shall be made, as aforesaid, imply and give to the incumbrancer, and his executors, administrators, and assigns, the following powers, and be deemed to contain the following provisions; namely, a power for the incumbrancer, in default of payment of interest for thirty days after it shall be due, to enter into possession, and receive and recover, by distress or other lawful means, the rents and profits of the land, and apply the same in discharge of his and their costs and interest, and, at his or their discretion, either to pay the surplus to the owner of the land, or retain the same in reduction of the incumbrance; and powers, at the like discretion, to compound with tenants, let the land on lease or otherwise, insure buildings against loss or damage by fire, pay all ordinary outgoings, make necessary repairs, appoint a receiver of rents and profits, allow him a reasonable compensation for his trouble, and depute to him all powers which the incumbrancer himself might exercise; and a power either after or before entering into possession or receipt of rents and profits, in case of default being made in payment of any interest due on such incumbrance for *forty* days after it shall be due, being demanded, but without further notice, or in case of default being made in payment of any principal money due on such incumbrance for *sixty* days after notice to the owner of the land, his heirs, executors, or administrators, or any or either of them, to pay the incumbrance, shall be given to or left for him, them, any, or either of them, at his, their,

any, or either of their usual or last known residence in the United Kingdom, power, without any further authority or consent, to sell the land or any part of the land which shall be subject to such incumbrance, to any person who shall be willing to become the purchaser thereof, and for such sum or sums of money, and under and subject to such special and other conditions and restrictions as to title or otherwise, as the person making such sale shall judge sufficient or think necessary and proper; with liberty to buy in any land which may be offered for sale at any auction, or any part of such land, and to rescind any contract for the sale of any land sold, and to resell the same respectively, either immediately or at any future time, either by auction or by private contract; and power to consent to the variation of the terms of any contract, without being answerable for any loss which may be occasioned by the exercise of any of such powers respectively, and to do all such acts as may be requisite or proper for the purpose of effectuating such sale, and to receive the money to arise from the sale, and out of the same money, together with any rents and profits which may be received by the person making the sale, to pay or retain all costs and expenses occasioned by the nonpayment of the money due on the incumbrance, whether for principal, interest, or costs, and the costs and expenses preparatory and incidental to the execution of the said powers; and a direction that the surplus (if any) of the money so to arise as aforesaid shall represent the equity of redemption of the land so sold, and be payable accordingly; and a provision that every receipt which shall be given by the person making such sale as aforesaid, or his agent, for the rents, profits, purchase or other money to arise as aforesaid, shall exonerate the person or persons paying the same from all liability in respect of the application thereof, and from being bound to inquire whether any money is or is not due on the incumbrance, or whether any demand of or notice as aforesaid has or has not been given, and from being affected by or bound to regard any notice to the contrary; and every such incumbrance as aforesaid shall, if the same be a charge by way of annuity or rent-charge, imply and give to the incumbrancer such and the same powers for recovering the same when in arrear as landlords have by law for recovering rent reserved by common demises when in arrear.

Disentailing deeds may also be registered.

That transfers of land which, according to the provisions of the Act for the Abolition of Fines and Recoveries, and the Substitution of more simple Modes of Assurance, ought to be enrolled in manner and within the time therein specified, in order that they may take effect as disentailing assurances, shall, if registered under the provisions of this act within the time appointed for enrolment by the recited act, and if conformable, except so far as respects enrolment, to the provisions of the recited act, have the same effect as they would have had if enrolled according to such act.

It is provided, with respect to any land or incumbrance which a *married woman* cannot transfer, release, or deal with by law, otherwise than by deed acknowledged in manner directed by the last-recited act,

That no transfer or release of such land or incumbrance, or dealing therewith by her, shall be effectual under this act, unless the same be evidenced by deed executed and acknowledged in manner prescribed by the recited act, and any deed so executed and acknowledged relating to any registered land or incumbrance shall also be registered under this act.

Registered lands under this act need not be registered under other acts.

CHANCERY REFORM.

DELAY IN THE MASTERS' OFFICES.

THE pamphlets on this subject continue to increase. Amongst others is a second edition of Mr. Purton Cooper's publication, which we noticed p. 267, *ante*. In the preface to this edition, the learned writer says:

"Some members of both branches of the profession, equity draughtsmen and solicitors, have, it is said, taken alarm at reforms, which would make it "nearly as cheap to obtain the opinion of the Court of Chancery, as to obtain the opinion of an eminent counsel," apprehending that such reforms must diminish incomes, which all will admit, in the large majority of instances, are, without aid from other sources than Chancery briefs, pleadings, and attendances, quite inadequate to afford a decent subsistence. But passing in silence over the argument, which must apply to lawyers equally with her majesty's other subjects—the loss of a class ought not to be an obstacle to the introduction of measures, which will be a benefit to all the rest of the community—the author firmly believes this alarm to be without foundation.

"The nature of the questions which come before the Court of Chancery is such—those belonging to its administrative as distinguished from its litigious jurisdiction vastly preponderating, and being of a kind to increase in proportion to the facilities afforded for adjudicating upon them cheaply and speedily—that although the profits and fees in each case would be much smaller, yet at the end of a few months, perhaps weeks, it would be found that the aggregate fees and profits were not diminished; the deficiency in the individual cases being fully compensated by the great augmentation in the number of cases.

"This is a point respecting which those, who are familiar with the statistics of the Court, and

have marked the character of the reforms effected by acts of parliament and general orders during the last twenty years, can entertain *no doubt*. Several descriptions of suits, with which the equity draughtsman was formerly familiar, have almost entirely disappeared, and in those which are the most numerous—suits for the administration of the estates of testators and intestates—comparatively with the practice of former times, the actual parties are few, and the parties, who put in answers and appear by counsel, are still fewer. Bills of revivor and supplement, and the proceedings consequent thereupon, have moreover much decreased from the rapidity which causes in all their stages, when once set down, are heard and disposed of by the Court. For the same reason, the huge heap of petitions and motions, for the most part or solely designed (often by way of experiment—Lord Eldon much encouraged the course) to obtain some relief during the long and distressing period, which intervened between the filing of the bill and the hearing of the cause, no longer incumbers the Court, but has sunk to its proper dimensions. Decrees may now be had in less time than orders could in Lord Eldon's days, and long subsequently, have been obtained upon such petitions and motions. The gradual amelioration of our procedure too has altogether abolished certain special interlocutory orders, of which at no distant periods hundreds were made and drawn up yearly. And after this change, what is the result? The result is—as any one who will take the trouble to examine the returns may easily satisfy himself—that neither in the number of bills filed, nor in the number of decrees and special orders made, is there any falling off.

"There is no foundation, therefore, for the alarm above alluded to. The reforms proposed will not, if carried, lessen professional incomes."

And in a note, Mr. Cooper adds:

"The writer has heard, that the aggregate income drawn by lawyers from professional practice, is much greater now than it was in 1814, the year preceding that in which the 10 per cent. income tax was collected. He is not informed upon what data this is said, but observation and reflection lead him to that conclusion. Individual incomes must, however, in general, be small now, when contrasted with what they were then. A comparison of the Law List for 1814 with the Law List for 1848, sufficiently explains this. The former contains the names of 821 counsel, special pleaders and conveyancers, and 1,836 London attorneys and solicitors. The latter contains the names of 3,176 counsel, special pleaders and conveyancers, and 2,872 London attorneys and solicitors."

The following is the title of a pamphlet, "By a Solicitor," who, as it appears, is a country practitioner: "The Court of Chancery, its Inherent Defects, as exhibited in its system of written proceedings; its Mode of Proof, its Mode of Trial, and its Mode of Appeal; with Suggestions for a Remedy." Our readers are well acquainted with the evil; it is *the remedy* that we have to look for. Thus, then, "A Solicitor," proposes:

"Am I asked whether a remedy for this state of things can be found? I answer, Yes. The absurdities of the present system are patent. The forms of justice should be 'short, nervous, and perspicuous;'* not 'lengthy, verbose, and formal.' Justice should, as far as possible, according to the plan of the great Alfred, be brought home to the doors of the people. This in reference to debts of not more than 20*l.*, is at the present time effected by means of the County Courts, which, as far as my experience has gone, has given the most complete satisfaction, especially in country towns. Without precisely suggesting the *manner* in which the system of Chancery is to be remedied; I can, I think, demonstrate, that remedy *is* feasible, by a simple statement. I can confidently say, from experience, that if the plaintiff in the case above adverted to, had been fortunate enough to have had a legacy of 20*l.*, instead of a legacy of 300*l.*, left him; and had brought the matter before the judge of the District County Court, he would have been able, at a very trifling expense, and in a very short period of time, to have obtained his legacy, or at least, to have obtained a decision on the case as equitable as human means will permit of. The parties would have been brought together, their statement, and the evidence of their witnesses heard, their documents examined, and the whole matter adjudicated upon within a month, (or in case of adjournment for evidence, within two months,) from the laying of the plaint; with far more chance of even legal justice, than by the voluminous process of the Court of Chancery. And I have not the least doubt, that could the plaintiff have submitted his claim as to the 300*l.* legacy, to the adjudication of the County Court, *the whole* question would have been decided in less than two months, and at less expense to all parties than 20*l.*; whereas, after five years in the Court of Chancery, the matter still remains unadjusted, and the expenses of the suit already exceed 700*l.*

"This answer is practical, and I think, incontrovertible. What could be done in one case, might be done in most, if not all others.

"As I said before, I do not presume to point out precisely how the remedy as to the Chancery Courts should be carried into effect. It might be in either of two ways—*first by abolishing these Courts entirely, and transferring their jurisdiction; giving to the Courts of Common Law the power, in certain cases, of examining the plaintiffs and defendants on oath.* And however some may object to this, from the effects of habit or prejudice, I feel convinced, looking

* Blackstone.

to the operation of the County Courts, and for the reasons before stated, that it would tend to a furtherance of justice.

"And why should not partnership disputes, and suits as to legacies, be decided in the Courts of Law, as well as questions of bankruptcy, or disputed titles to land; which latter may now be made the subject of common law actions?

"*Or secondly, the remedy might be applied, by remodelling the Courts of Chancery themselves*—by substituting for the present system of written examination and Canonical Law, the forms of the Common Law—Circuits for the Judges or Masters, with power to take the oral evidence of the parties to the suit—open trial—and a right of appeal, not to one judge, but to several. This would at least, be a rational course, and would do away with much delay and expense, and the interminable reference to the Master's offices."

We give these suggestions as we find them, deeming it right that the country as well as the town should have equal audience. The pamphlet ably sets forth the grievances complained of; but the remedy appears to be applicable only to the simplest and clearest cases.

ANNUAL CERTIFICATE DUTY OF ATTORNEYS.

NUMEROUS petitions are in course of preparation, with a view to an early application to parliament for the repeal of this Poll Tax. We gave the substance of the Law Society's petition on the 17th ultimo. The following one, which has been presented from Wales, contains a somewhat different view of the subject: we lay it before our readers.

After stating the amount of the duty, the petition sets forth—

"That in and since the year 1830, several acts of parliament have been passed and are now in force, which, being particularly coupled with the operation of the recent act for the recovery of debts not exceeding 20*l.*, have very materially, and to a very considerable extent, reduced the profits arising to attorneys and solicitors from their professional engagements; and your Petitioners are not aware of any legislative enactments passed in or since the year 1830 that have in any way been the means of compensating members of the legal profession for the loss they sustained by the passing of those acts; yet no intention has been shown by her Majesty's government to afford them any relief for the loss thus sustained by obtaining the sanction of the legislature to a Repeal of the said Annual Certificate Duty.

"That your petitioners willingly pay their portion of the public taxes in general, but your petitioners consider it an oppression that members of the legal profession should be selected as a body on which the annual tax is to be exclusively imposed, whereas the clergy and medical profession are exempt from a similar tax.

"That this Annual Certificate Duty is unjust and unequal in its operations, because a member of the legal profession who hardly earns 100*l.* or 150*l.* a year from his professional engagements, has to pay the same amount of duty as he that realizes his 1,000*l.* per year from a similar source; and that it does not afford that protection to the rights and privileges of the profession which might be expected to be derived from its imposition.

"That your petitioners may safely assert, that in consequence of the said act passed for recovery of debts not exceeding 20*l.*, they have been almost entirely deprived of their common law practice."

BANKRUPT LAW CONSOLIDATION BILL.

AMONGST the alterations or amendments in the law which are proposed to be made under this bill, a very important one relates to the purchase of property from, or dealings with, a trader, for a certain time prior to the issuing of a fiat of bankruptcy against him. There appears to be considerable hazard in the intended alterations; for who can know, in dealing with the trader, whether he is solvent or not? Sir Samuel Romilly's Act limited the setting aside of transactions after a secret act of bankruptcy to *two months*, but that act was afterwards repealed, and all dealings with the trader were held good up to the actual issuing of the fiat.

Now it is intended to return, to a certain extent, to the provisions of Sir Samuel Romilly's Act. This requires much consideration, but as many recent alterations of previous laws have by experience been found mischievous, it may possibly in this, as in other respects, be found expedient to return partly at least to the previous state of the law.

It appears by some of the clauses, that the petitioning creditor is to be held responsible for the acts of the messenger, who being the officer of the Commissioners, and not under the direction of the petitioning creditor, ought not to saddle his mistakes upon the unfortunate suitor in bankruptcy.

With regard to *deceased debtors*, the proposed alterations of the law should be the subject of a separate bill. It will scarcely be endured that the estate and effects of every deceased person, owing a

small sum at his death, should be made liable to pass through the Court of Bankruptcy, messengers taking possession of the deceased's house, his goods and chattels, and turning his widow and family out of doors, or subjecting them to the annoyance of having a man in possession quartered upon them. There may be, and doubtless are frequent frauds in regard to the effects of deceased persons, but the proposed remedy seems far too violent and indiscriminate to meet with public approbation. The profession, on account of their personal interests, need not object to the measure, for it will lead to abundant litigation. Their interests, however, are never regarded either by themselves or others.

THE ECCLESIASTICAL COURTS.

EVILS OF THEIR MULTIPLICITY.

If there is no prospect of abolishing these Courts, let me hope, at all events, that they will be reformed, and that thoroughly. In a recent case in the sister kingdom, a gentleman has been harassed and vexed with no less than four or five suits in different Ecclesiastical Courts, for a divorce, on grounds utterly false and untenable.

No sooner was one suit determined in his favour than another was instituted in another diocese, but upon similar grounds, and bolstered up and supported by means I will forbear describing; and on that being dismissed, another was instituted, and in like manner prosecuted with the like result. In every case the costs were saddled upon the husband, and in one case they amounted to 1,000*l.* Surely this calls for a prompt remedy.

C.

MOOT POINTS.

WRITS.—JOINDER OF NAMES.

Can I join in one writ defendants who reside in different counties, and who must be joined in one action: thus in trespass against *A. B.* and *C.*, if *A.* resides in Middlesex, *B.* in Surrey, and *D.* in Essex, can I join the three in one writ, and put in the corner of the præcipe the three counties, or must I have three writs, (but that is three actions, is it not?) or must I have three actions?

H. W. C.

STUDENTSHIPS.—TRUSTEES.—LINCOLN'S INN.

Christopher Tancred, of Whixley, in Yorkshire, dying 1754, bequeathed property to a considerable amount, to be vested in trustees for ever for the education of 12 gentlemen, four in divinity, at Christ's College, Cambridge, four in physic, at Gonvil and Caius Colleges, and four in common law, at Lincoln's Inn. The trustees named were the masters of Christ, Gonvil, and Caius Colleges, the treasurer of the Honourable Society of Lincoln's Inn, the master of the Charterhouse, and other public responsible persons.

For these studentships, the requisites were to be, membership of the Established Church, native of Great Britain, age to exceed 16 years, circumstances so humble as to be unable to get the education directed by the will without assistance.

Pray, Mr. Editor, is this excellent charity used or abused? The election is directed to be made by the trustees in Lincoln's Inn Hall. One never sees, hears, or knows anything of it. Any information will oblige your correspondent.

H. B.

CONSIDERATION FOR AGREEMENT.

In the case of *Rann* v. *Hughes*, 7 T. R. 350, *n.* a., Lord C. B. Skynner, said, "All contracts are by the laws of England distinguished into agreements by specialty, and agreements by parol. If they be merely written and not specialties, they are parol, *and a consideration must be proved.* The words of the Statute of Frauds are merely negative, and that executors and administrators should not be liable out of their own estates, unless the agreement upon which the action was brought, or some memorandum thereof, was in writing, and signed by the party. But this does not prove that the agreement was still not liable to be tried and judged of as all other agreements merely in writing are by the common law, and does not prove the converse of the proposition, that when in writing the party must be at all events liable." So a promise to pay the debt of another (and a guarantee of course) is void, unless a legal consideration is stated in the written agreement.

Lex.

It is always dangerous to trust to the evidence of a witness to a verbal contract. His memory may be imperfect, or he may intentionally deceive. Before the statute many *verbal* contracts were binding; but they, like every other contract, must have had a sufficient *consideration* to support them. Therefore, a *promise* "to answer for the debt, default, or miscarriage of another" was not binding, unless the *consideration* for it were legally sufficient. Such was the *law*,—the *mischief* was that verbal contracts gave rise to perjury. The *remedy* intended was to have a *writing* which would prove itself. When a *verbal promise* was allowed, *parol evidence of the consideration could not be excluded;* but when a *written promise* was necessary, *parol evidence* could not *be allowed to show the consideration.* Hence the *promise* and *consideration* (express or implied) must be *in or gathered from* the document.

M. M.

GRIEVANCES OF THE PROFESSION.

RESTRICTIVE CLAUSES IN BUILDING AND OTHER LEASES GRANTED BY PUBLIC BODIES.

To the Editor of the Legal Observer.

SIR,—I wish to draw attention to the restrictions imposed on lessees by public bodies against a frequent assigning or underletting, and with a view to obtain the sentiments of the profession in general on the subject, and to effect the abolition of these obnoxious provisions, I hope your correspondents will unite in deprecating them.

I do this in the hope of convincing the different public bodies, that *it is in the last degree injurious* to them and to their properties, inasmuch as builders *uniformly decline* to take leases with *such restrictions*, and the consequence is that their valuable building ground is uncovered, whereas adjoining land, belonging to a private individual, is covered, with houses.

The lessee is called upon to pay for a license to assign, and for a deed of covenant or defeazance, between the sublessee or purchaser and the company, with fresh covenants for such purchaser for payment of rent and the performance of covenants, and with fresh covenants against assignment, &c., without employing the clerk of the company, &c., &c.

In most cases, printed leases are executed by the companies, for which about double the price is exacted of that which would be charged by another solicitor, and no inconsiderable additional charges are made for licenses to assign and deeds of defeasance, and being compelled to employ the solicitor or clerk of the company, the charges in many cases amount to nearly three times as much as they would do were the purchaser to employ his own solicitor.

I abstain from any observations tending to show the illegality of such restrictions,—on which subject I may trouble you on a future occasion. CIVIS.

FINES ON BUILDING LEASES IN THE MANOR OF KENNINGTON.

IN reference to the instructions from the Council of H. R. H. the Prince of Wales, with regard to assessing fines on building leases, I admit that in all cases where the copyholder is the owner of the improved rent either by purchase of the building lease, or by having himself erected the building, the proposed fines are fair and equitable; but where the copyholder barely *receives* the *ground rent*, they are exorbitant and such as he ought not in conscience to be called upon to pay, more especially under licenses to demise.

All the benefit the copyholder receives during the existence of the building lease is the ground-rent of say 10*l.* a year, and why the surrenderee should be called upon to pay according to the table, where ten years of the term are unexpired, a fine of 67*l.* 11*s.* 1*d.*, as the copyholder is only *beneficially* entitled to the general rent of 10*l.*, I am utterly at a loss to discover. I yet hope that the council will reconsider their determination, and act liberally to the tenants of the manor. L.

STATE OF LAW BILLS IN PARLIAMENT.

House of Lords.

Corrupt Practices at Elections. In Committee.—The Lord Chancellor.

Consolidation and Amendment of the Bankrupt Law. In Select Committee.—Lord Brougham.

Criminal Law Consolidation. In Select Committee.—Lord Brougham.

Conveyance of Real Property Act Amendment. For 3rd reading.—Lord Brougham.

Law of Larceny. In Select Committee.—Lord Campbell.

Marriages in Scotland. In Committee.—Lord Campbell.

Births' Registration in Scotland. For 2nd reading.—Lord Campbell.

Proceedings against Clergy. For 2nd reading.—Bishop of London.

House of Commons.

Real Property Transfer. For 2nd reading.—Mr. H. Drummond.

Joint-Stock Companies' Transfers of Shares.—Mr. Headlam.

Corrupt Practices at Elections. For 2nd reading.

Commons' Inclosure. Passed.—Mr. C. Lewis.

Conveyances by Mortgagees and Trustees.—Mr. Headlam.

Assignment of Life Policies. For 2nd reading.—Mr. Fagan.

Buckingham Assizes. For 3rd reading.—Mr. Du Pré.

Affirmations in lieu of Oaths. For 2nd reading.—Mr. Wood.

Law of Public Roads. For 2nd Reading.—Mr. Cornwall Lewis.

Improvement of Law of Landlord and Tenant.—Mr. Pusey.

Parochial Assessments.—Sir H. Inglis.

Law of Marriage.—Hon. J. S. Wortley.

Marriages Abroad.—Sir H. Inglis.

Bribery at Elections Prevention. In Committee.—Sir J. Pakington.

Qualification of Voters.—Sir De Lacy Evans.

Insolvent Members. In Select Committee.—Mr. Moffatt.

Navigation Laws. In Committee.—Mr. Labouchere.

Petty Sessions in Boroughs. In Committee.—The Attorney-General.

Abolishing Punishment of Death.—Mr. Ewart.

Distraining for Rates. In Committee.

Copyhold Compulsory Enfranchisement.—Mr. Anglionby.

RECENT DECISIONS IN THE SUPERIOR COURTS,

AND SHORT NOTES OF CASES.

Lord Chancellor.

Onyon v. *Washbourn.* Jan. 25, 1849.

INJUNCTION.—TRADE-MARKS.

Injunction granted restraining the defendant from using labels, cards, handbills, &c., which were used for the purpose of leading the public to believe that the manufacture to which they related was made by the plaintiff.

Costs in the Court below to be borne by plaintiff, as he had sought a too large injunction. Each party to pay their own in the appeal.

THE Vice-Chancellor of England had dissolved an injunction restraining the defendant from selling a composition called "waterproof dubbing," and from using labels, cards, and bills, &c., similar to those the plaintiff used. It appeared that the plaintiff had, for a long time past, manufactured and sold the waterproof dubbing, and that the defendant had, by using the plaintiff's means of advertisement, led the public to believe that his (the defendant's) was the original manufacture.

J. Parker and *Lloyd* for the appellant from the order of the Vice-Chancellor; *Stuart* and *Cooper* for the respondent.

The *Lord Chancellor*, having examined the defendant's labels, &c., said that they were clearly made with a view of misleading parties as to the dubbing sold, and at the same time of avoiding an injunction. That part of the injunction, therefore, relating to the labels, &c., which was refused by the Vice-Chancellor, would be granted. But as the plaintiff had sought in the first instance too large an injunction, he must bear the costs in the Court below:—each party paying his own costs of the appeal.

Major v. *Elcock.* Jan. 31, 1849.

EXECUTOR.—TRUSTEE.—RESIDUE.

Held, (reversing the decision of the Vice-Chancellor of England,) that an executor is not entitled to take beneficially the residue of property devised upon certain trusts after they have been performed, but is only trustee for the next of kin. Dawson v. Clarke, 15 *Ves.* 409, *overruled.*

THE testator, who was a barrister in the island of Barbadoes, by his will devised all his property in the island to the defendant, and also appointed him executor. It appeared that the trusts created by the will had not exhausted the property set apart for those purposes, and a question was raised whether the defendant took the residue beneficially in his character as executor, or whether he was only trustee for the plaintiff, who was the testator's next of kin. The Vice-Chancellor of England, upon the authority of *Dawson* v. *Clarke*, 15 Ves. 409, decided that the executor took beneficially the undisposed of residue. The case now came on upon appeal from that decision.

The *Lord Chancellor* said, that the law as to questions of this nature, under wills made after 1st September, 1830, was regulated by the statute 11 Geo. 4 and Wm. 4, c. 40, which expressly declared, by sect. 1, that "when any person shall die, after 1st September next after the passing of this act, having by his or her will, or any codicil or codicils thereto, appointed any person or persons to be his or her executor or executors, such executor or executors shall be deemed by Courts of Equity to be a trustee or trustees for the person or persons (if any) who would have been entitled to the estate under the Statute of Distribution, in respect of any residue not expresly disposed of, unless it shall appear by the will, or any codicil thereto, the person or persons so appointed executor or executors, was or were intended to take such residue beneficially." The will in this case had been executed before that date, and did not therefore come under the provisions of that act. In *Dawson* v. *Clarke*, 15 Ves. 409, upon which the Vice-Chancellor had founded his decision, Sir W. Grant had held, that the executor took the undisposed of residue beneficially, *against the claim* of the next of kin: the whole property being personal. But that decision had been appealed from, and Lord Eldon had dissented from the doctrine of the Court below, (18 Ves. 255). The whole of the property, it appeared, had been devised to the defendant upon certain trusts, which had not exhausted the interest of the testator therein. It did not, however, follow, that the executor was entitled to take the residue beneficially; for a trustee cannot take such residue declared to be upon trust, even when the trusts created are performed. The appeal from the decree of the Court below must therefore be allowed.

Westby v. *Westby.* Jan. 31, 1849.

COSTS OF FIRST SUIT.—PROCHEIN AMI.—INFANT.

The costs of a suit ordered to be taxed and paid in a second suit instituted, as it appeared by collusion, and which stopped the proceedings in the first; and the next friend of the wife in the first, entrusted with the conduct of the second, suit.

THIS was a suit for an account instituted by an infant against his mother, who had been receiving the rents of certain estates in Yorkshire. Before, however, it could be brought to a hearing, owing to the mother residing out of the jurisdiction, she instituted a second suit, and

obtained a decree, and thereby put an end to the original suit. The Vice-Chancellor Knight Bruce had refused, on the ground of prematurity, a motion made to tax the costs of the first, and to be paid in the second, suit, and that the infant might conduct the second suit by his *prochein ami*, who conducted the first. From which decision the next friend appealed.

Cooper and *Schomberg* for the appellant; *J. Russell* and *Haldane* for the respondent.

The *Lord Chancellor* said, that as the decree in the second suit had stopped all proceedings in the first suit, it was only just that the costs thereof should, as it appeared a proper suit, be taxed and paid in the second. There had manifestly been collusion in getting up the second suit, and it appeared that the interest of the infant would be best protected by entrusting its conduct to the next friend; and, therefore, the order of the Vice-Chancellor must be reversed.

Feb. 23.—*Exparte Dowell*—Reference to the Master to inquire as to the fitness of appointment of trustee.

— 24.—*Beardmore* v. *London and North Western Railway Company*—Judgment of the Vice-Chancellor of England reversed.

— 24, 28.—*In re Dyce Sombre*—Part heard.

— 23, 28.—*Sharpe* v. *Arbuthnot* — Appeal dismissed with costs.

— 23, 24, 28.—*Sharpe* v. *Gladstone*—Appeal dismissed with costs.

Rolls Court.

Feb. 22, 24, 26.—*Attorney-General* v. *Corporation of London*—*Cur. ad. vult.*

— 22, 23, 26, 27.—*Hooper* v. *Denoon, Denoon* v. *Hooper*—Cross bill dismissed with costs—Accounts to be taken of the partnership dealings—without opening settled accounts—Further directions and costs reserved.

— 27, 28.—*Williamson* v. *Gordon and others*—Reference to the Master to take account of debt due on bond.

— 28.—*Hitchcock* v. *Glendining*—Order to Clerk of Records and Writs to attend at the hearing with the record of the bill, if the notice of motion was regular, otherwise fresh service to be made.

Vice-Chancellor of England.

Chipchase v. *Simpson*. Jan. 19, 1849.

WILL.—CODICIL.—SEPARATE USE.

Upon construction of a will and codicil, held, *that the testator's sister was entitled to the fund devised, but not to her separate use.*

THE testator, George Best, by his will, gave and bequeathed to his sister, Jane Chipchase, the sum of 1,000*l.* British sterling currency, for her, *or* for her children's sole use, benefit, and behoof, for ever, and desired his executors, as soon as practicable, to pay the same to her. By a codicil he directed his executors to invest a like sum in the funds, and to pay the dividends thereof to his sister towards her support, and to enable her better to support, clothe, and educate her children. He also directed that when the youngest child attained the age of 21, the fund was to be divided among them, share and share alike. The sister survived the testator.

Bethell, Rolt, J. Parker, Malins, Hallett, R. Palmer, and Giffard, appeared for the several parties.

The *Vice-Chancellor* said, that the clause in the will, which had not been read, whereby the testator gave 400*l.* to John Chipchase to manage the farm, or if he died, to his (the testator's) sister, *or*, in the event of her decease, to be paid to her children, share and share alike, showed that the meaning the testator put on the word "or" was disjunctive; and that the words "as soon as practicable" further explained the testator's intention to be, that his sister should take the fund if she survived, but not to her separate use, or, if she died before him, that the children should be entitled thereto.

Willey v. *The South Eastern Railway Company*. Jan 31, 1849.

RAILWAY COMPANY.—INJUNCTION.

Injunction granted against a railway company restraining them from entering upon land where the appointment of valuer was made by one magistrate only, and the plaintiff claimed more than had been paid into Court.

THE plaintiff was owner of a house and garden at Charlton, Kent, and the South-Eastern Railway Company requiring for the purposes of their railway a portion of his land, amounting to one rood eight perches, procured a valuation to be made and a bond executed by two sureties, as required by the statute.

The valuer had been appointed by Mr. Trail, the police magistrate. The company having proceeded to take possession of the land, and paid a sum of 1,600*l.* into Court, the plaintiff applied for an injunction to restrain the company from further entering upon or interfering with any part of his land, until proper compensation should have been made, and objecting to the appointment of the valuer by one, instead of two, magistrates. By the 28th section of the Lands' Clauses Consolidation Act, (8 Viat. c. 18,) it is enacted, that "two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire," &c., "shall be final."

The *Vice-Chancellor* said, that as the valuation had not been carried out according to the directions of the act, and as the plaintiff claimed a greater sum than had been paid into Court, the injunction as prayed for must be granted.

Feb. 22.—*Surtees* v. *Hopkinson*—Judgment upon construction of a will.

— 22.—*Solomons* v. *Marks*—Judgment on construction of will.

— 23.—*Bonner* v. *Bonner*—Reference to the Master as to the interest of the parties in the surplus in the hands of trustees of a benevolent society.

— 23.—*Gilpin* v. *Cookson*—Injunction restraining the removal of plate-glass windows from a shop.

— 23, 24.—*Watts* v. *Symes*—Reference to the Master; the plaintiff declared first mortgagee.

— 24.—*In re Wainman*—Certain expenses incident to the rebuilding premises ordered to be paid out of money paid into Court by the railway company.

— 24.—*Baker* v. *Salmon*—Bill dismissed with costs.

— 26.—*Earl of Balcarres* v. *Hudson*—Bill dismissed with costs.

— 26.—*Shelton* v. *Watson*—Judgment on construction of will.

— 26.—*Attorney-General* v. *Bishop of Hereford*—Order for appointment of new trustees to charity.

— 27.—*Briggs* v. *Devereux*—Bill dismissed with costs.

— 27.—*Hutton* v. *Hdley*—Stand over.

— 28.—*Padwick* v. *Hanslip*—Injunction dissolved.

Vice-Chancellor Knight Bruce.

(In Bankruptcy.)

Exparte Miller, In re Swann. Jan. 24, 1849.

ANNUITY.—ENROLMENT OF SECURITIES.

Where an annuity was partly secured by deeds deposited, with a written memorandum, and partly by a bond duly enrolled—the whole of the securities must be enrolled, and a petition for sale of the securities not enrolled was dismissed.

THE petitioner in this case claimed an annuity, partly secured by a deposit of deeds with a written memorandum, and partly by a bond duly enrolled according to the Annuity Act, and sought to have the security sold.

Webb for the petitioner; *Russell* for the assignee.

The *Vice-Chancellor* held, that the present Annuity Act did not differ from the former acts in requiring that all the securities created contemporaneously with the principal security should be enrolled. The petition was dismissed, but with leave to the petitioner to file a bill and enter a claim.

Ingram and another v. *Strange.* Jan. 18, 1849.

INJUNCTION. — COMMON LAW RIGHT IN DESIGN.

Where a design not registered under the act was pirated, an application for an injunction was ordered to stand over, with leave to plaintiffs to bring an action on their common law right.

THIS was a motion for an injunction to restrain the defendant, or his servants, workmen, and agents, from selling any covers made like the plaintiffs', which were prepared for the half-yearly volumes of the Illustrated London News, and were ornamented with illustrations relating to the matters contained in the volume. It appeared from the bill and affidavits that the defendant had obtained the covers and had imitated them, and had also used the plaintiffs' address, "198, Strand." The design had not been registered under the Copyright of Designs' Act, (6 & 7 Vict. c. 65).

Russell and *B. Moore*, for the plaintiffs, contended that the designs and address were trade-marks, the imitating of which might be restrained, independently of statutory enactments: citing *Matthewson* v. *Stockdale*, 12 Ves. 270; *Walker* v. *Aikin*, 17 Ves. 425.

Wigram and *S. Smith*, for the defendant, offered to undertake to discontinue the plaintiffs' address.

The *Vice-Chancellor* said, that the case depended on the common law right of the plaintiffs in the property, and not on any act of parliament, and it could not be considered as falling within the class of cases relating to the piracy of trade-marks. The defendant undertaking to discontinue the use of the address, without prejudice, the motion might stand over, with leave to the plaintiffs to bring an action.

Feb. 23.—*Gordon* v. *Hope*—Judgment on construction of a marriage settlement.

— 23.—*Davies* v. *Thorns*—Judgment on construction of will.

— 24.—*In re Privett*—Order to infant to reconvey under 1 Wm. 4, c. 60, with reference to the Master.

— 26.—*Exparte Green and exparte Clarke, In re Tring, Reading and Basingstoke Railway Company*—Amount of salary of secretary ordered to be kept in hand; proceedings to be taken by action or suit to prove the right thereto.

— 26.—*Exparte Sturges, in re Kernot, Cattlin respondent*—Fiat to be annulled with costs.

— 26.—*Re Dunn and others, exparte Wigan*—Reference directed to Commissioner as to amount due to bankers on their account.

— 27.—*Baily* v. *Harrison*—Interim order for injunction.

— 28.—*Burch* v. *Coney*—Injunction refused.

— 28.—*In re North of England Joint-Stock Banking Company, Exparte Fenwick*—Master's report confirmed.

Vice-Chancellor Wigram.

Webster v. *Bray.* Feb. 9, 1849.

PARTNERS.—JOINT SOLICITORS TO RAILWAY COMPANY.

A reference was directed to the Master to take an account of the business separately

done by joint solicitors to a railway company, where an issue as to the joint appointment was refused, and to allow 25 per cent. on such business.

THE plaintiff and defendant were solicitors, and had acted professionally for the Fleetwood, Preston, and West Riding Junction Railway Company. The questions raised were, 1st, whether they were partners and entitled to participate equally in the profits, by the terms of their appointment and the arrangement between themselves in the transaction of the company's business, or whether each was to be paid according to the work actually performed by him. The bill of costs had been paid to the defendant on his guaranteeing the company against the claim of his partner. A comparatively small sum only was admitted by the defendant to be due to the plaintiff. An issue to try the question having been declined,

The *Vice-Chancellor* said, that an order would be made, on the footing of an implied contract for a partnership, referring it to the Master to take the accounts of the work respectively performed by each of them while acting as joint solicitors to the company. The Master would be directed, under the head of just allowances, to allow each party 25 per cent. on the work performed separately by such party.

Feb. 22.—*Culsha* v. *Cheese*—Stand over for heir at law to consent to special case to a court of law.

— 23, 24.—*Hepworth* v. *Heslop*—Issue directed to ascertain whether the defendant was entitled to the amount of a bond given by testator.

— 24.—*Price* v. *Berrington and others*—*Cur. ad. vult.*

— 26.—*Townshend* v. *Marten*—Judgment on construction of will.

— 27.—*Hart* v. *Tulk*—Receiver appointed in both suits.

— 27.—*Lucas* v. *James*—Part heard.

— 27.—*Attorney-General* v. *Corporation of Congleton*—Stand over.

— 28.—*M'Gregor* v. *Bainbrigge*—Part heard.

Queen's Bench.

(Before the Four Judges.)

Alcock v. *The Royal Exchange Assurance Company.* Jan. 29, 1849.

MARINE INSURANCE.—EVIDENCE.

Where a witness examined under a commission referred to a written statement of facts made under a former proceeding, to which the witness said he adhered, held, *that the document to which the witness referred was properly rejected upon the trial.*

Where the question in issue was, whether a ship had been properly abandoned, held, *that the defendants might show that the captain was an habitual drunkard, and was thereby deprived of the means of exercising a sound discretion.*

IN an action on a policy of assurance on a ship, where the vessel had been abandoned by the captain and crew, and the insurers sought to recover against the underwriters for a total loss, a commission was granted for the examination of witnesses under which a person named Skottoe was examined in Egypt. In the course of his examination the examinant referred to a written statement he had before made, verified by a consul, upon the same subject, to which statement he now adhered. The document so referred to by the examinant was tendered by the plaintiff, and rejected at the trial. Evidence was also adduced by the defendants, on the trial, that the captain of the ship was an habitual drunkard, and this evidence was objected to on the ground that the captain's unfitness for his duty, like unseaworthiness of the ship, ought to be specially pleaded, and if not pleaded, that evidence to prove such a fact was inadmissible. The evidence, however, was admitted, subject to this objection. A verdict having been found for the defendant, a rule was obtained for a new trial, on the grounds that the document already referred to had been improperly rejected, and that the evidence as to the captain's habits was improperly admitted.

The *Court*, after taking time to consider, determined that the document alluded to by the witness in his examination was properly rejected. As to the second point, the Court did not consider the evidence as to the captain's drunkenness as one merely affecting his credit. The question at issue was the propriety of the abandonment. If the act of abandonment was directed by an intelligent and impartial mind, it might be justified in an action where an abandonment had taken place, and the question always was, what a prudent uninsured owner would have done under the circumstances. It was clear that the soundness of the judgment of the master of the vessel who decided on the question of abandonment, was properly the subject of consideration. Lord Tenterden had expressly laid down that doctrine, and it did not seem possible to exclude from the inquiry the power of the master to form a sound judgment as effected, or not, by habitual intoxication. The defendants were, therefore, entitled here to show that the captain had not the means to exercise a sound judgment; and as the Court was of opinion that the verdict was fully justified by the evidence, the rule for a new trial must be discharged.

Rule discharged.

Bayley v. *Haines.* Feb. 10, 1849.

ILLEGAL SEIZURE BY EXCISE.—INSUFFICIENT DEFENCE IN ACTIONS FOR GOODS SOLD.

THE defendant bought a large quantity of sweet spirits of nitre from the plaintiff, who brought an action to recover the value: and the defendant pleaded, that after the deliver

of the goods by the plaintiff, they were seized and condemned by the excise, so that the defendant derived no profit or advantage from his purchase. On the part of the defendant it was insisted, that the plea disclosed a total failure of consideration.

Lord *Denman*, in delivering the judgment of the Court, observed, that the case of the *Attorney-General* v. *Bayley*, 16 Mees. & Wels. 71, decided by the Court of Exchequer, after the goods which were the subject of the present action were seized, satisfied the Court that the seizure was illegal; it could not therefore prevent the plaintiff from recovering in this action. Moreover, the condemnation of the spirits of nitre took place behind the back of the plaintiff, who took no part in the proceedings, and had no opportunity of resisting the condemnation. There was no allegation in the plea that the plaintiff had received any notice of the seizure. He ought not, therefore, to suffer by the condemnation, even if it had been right; but, as the condemnation was wrong, that was an additional reason why the plaintiff should have had notice, for if he had had an opportunity of resisting the condemnation, that resistance would have been successful. The judgment of the Court must therefore be in favour of the plaintiff.

Feb. 24.—*Regina* v. *Charretie*—Rule for new trial dismissed.

— 24.—*Regina* v. *Great Western Railway Company*—Rule absolute to quash allowances of certain law expenses in overseers' accounts.

— 24.—*Shaw* v. *York and North Midland Railway Company*—Rule absolute to enter nonsuit.

— 24.—*M'Swiney* v. *Royal Exchange Assurance Company*—Judgment for the plaintiff.

— 24.—*Regina* v. *Auditor of the Amersham Union, In re Burnham Parish*—Audit in certain respects held erroneous; vestry not to pay costs—but the auditors would not be reimbursed the costs incurred.

Court of Common Pleas.

Hoare v. *Dickson*. Jan. 27, 1849.

SLANDER.

Rule absolute, restraining second action, until costs of former action, in which plaintiff sued in forma pauperis, *were paid; it appearing that the slander complained of was uttered before the first action, and for the same cause.*

A RULE had been obtained calling on the plaintiff to show cause why the action should not be stayed until the costs in a former action had been paid. The plaintiff had brought an action of slander against the defendant, but her counsel elected to be nonsuited on finding the case was hopeless. She then brought another action for slander, which, however, had been uttered before the former action was commenced, and might, it was contended, have been declared on therein. It appeared that the defendant's costs in the first action had been paid by the Royal Naval Benevolent Society, of which the defendant was secretary.

Carter showed cause against the rule; *Shee*, S. L., in support.

The *Court* were of opinion that the payment of the defendant's costs by the Royal Benevolent Society did not exempt the plaintiff from payment, and that the causes of action were substantially the same, and ought to have been included in the former action. The defendant ought not to be subjected to another action for the same cause, when one would have been sufficient, and the plaintiff sued in *formâ pauperis*. The rule staying the second action until payment of the costs of the former action must, therefore, be made absolute.

Hoare v. *Dickinson*. Jan. 27, 1849.

THIS was a similar action of slander by the same plaintiff, but the defendant was only a member of the Royal Benevolent Society, and not secretary, and it was contended that he was not called on *ex officio* to make the inquiries and statements which formed the subject of the action. A rule *nisi* had been obtained, as in the last case.

Carter showed cause against the rule; *Shee*, S. L., in support.

The *Court* held, that there was no substantial difference between the two cases, and made the rule absolute.

White v. *Wigley*. Jan. 29, 1849.

COUNTY COURT.—COSTS.—DEFECTIVE AFFIDAVIT.

An affidavit in support of an application to enter a suggestion for depriving a plaintiff of his costs under the County Courts' Act, must show that the defendant dwelt within the jurisdiction of the County Court, and that neither party was an officer of the Court where the action was brought.

THE defendant had obtained a rule *nisi*, calling on the plaintiff to bring in the record for the defendant to be at liberty to enter a suggestion under the 119th section of the County Courts' Act, to deprive him of costs, and to set aside the final judgment obtained in the action. The plaintiff had recovered a verdict in the Secondaries' Court for 50*s*., being the amount of medicines supplied by him to the defendant, who was a clerk at the Union Club House, in Trafalgar Square. The rule *nisi* had been granted on the ground that as the amount was less than 20*l*., the action ought to have been brought in the Westminster County Court within the jurisdiction of which the defendant resided. The affidavit, however, which stated this, appeared not to have clearly negatived the second and third exceptions of the 128th section of the 9 & 10 Vict. c. 95, whereby it is enacted, "That all actions and proceedings which before the passing of this act might have been brought in any of her Majesty's Superior Courts of Record (1) where

the plaintiff dwells more than 20 miles from the defendant, (2) or where the cause of action did not arise wholly, or in some material point, within the jurisdiction of the Court within which the defendant dwells or carries on his business at the time of action brought, (3) or where any officer of the County Court shall be a party," &c., "may be brought and determined in any such Superior Court," &c. But it merely stated that at the time of action brought, the defendant "was and is employed, dwells, and carries on his business there." Nor did the affidavit deny that neither the plaintiff nor defendant was an officer of the County Court, but said that "neither the plaintiff nor the defendant *are* officers of such a Court."

White appeared against the rule, and cited *Butler* v. *Corney*, 17 Law J., Exch., 265.

Joyce, in support of the rule.

Wilde, C. J., said, that as the affidavit did not show that the defendant *dwelt* within the jurisdiction of the Westminster County Court at the time of action brought, and also that neither party was an officer of the County Court, it was insufficient, and the rule must be discharged.

Cresswell and *Williams*, J.J. concurred.

Court of Exchequer.

Thompson v. *The Universal Salvage Company*.
Jan. 30, 1849.

JOINT-STOCK COMPANIES' WINDING-UP ACT.—DUE DILIGENCE.

When the affairs of an insolvent company are placed in the hands of a Master in Chancery, under the provisions of the Winding-up-Act, (11 & 12 Vict. c. 45,) a Court of Law will not allow execution to issue against a member of the company, unless the creditor uses due diligence by endeavouring to obtain payment of his debt by going before the Master.

Upon showing cause against a rule to issue a *scire facias* against a member of the company, upon an affidavit that there were no funds of the company out of which the judgment debt could be satisfied, it was objected that the affairs of the company were in course of administration in Chancery, under the provisions of the Joint-Stock Companies' Winding-up Act, (11 & 12 Vict. c. 45); and that it did not appear the plaintiff had gone before the Master under the 73rd section to prove his debt, so as to entitle him to obtain payment under the act. To this it was answered that the proceedings under the Winding-up Act were not meant to operate to delay the remedies of creditors, and that it was competent for the plaintiff either to resort to the Courts of Law under the provisions of the 7 & 8 Vict. c. 110, s. 68, or to avail himself of the proceedings before the Master in Chancery.

Phipson showed cause against the rule, and *Lush* was heard in support of it.

Per Curiam. The creditor who has obtained judgment against a company, and cannot obtain payment from the company, has a remedy by applying to the Court, or a judge for a *scire facias* against a shareholder, under the provisions of the 7 & 8 Vict. c. 110, s. 68, but by the 66th section of that act, although the creditor may have immediate execution against the goods of the company, he can only have execution against individual members when he has satisfied the Court that he has used due diligence to obtain payment of his debt from the effects of the company, and has not succeeded. By the 11 & 12 Vict. c. 45, s. 73, the Master appointed in Chancery is empowered to proceed against all the members of the company, and to enforce contributions for the payment of creditors. If the proceeding under the 11 & 12 Vict. c. 45, proves abortive, the Court would probably, in the exercise of its discretion, allow an unsatisfied creditor to proceed against an individual shareholder; but until the creditor goes before the Master under the 73rd section, proves his debt, and endeavours to obtain satisfaction by the means pointed out by the act, this Court cannot say that he has used due diligence to procure payment from the effects of the company, and will not authorize execution to issue against an individual shareholder.

Rule discharged.

Feb. 26.—*Hallifax* v. *Linn*.—Judgment for the plaintiff on demurrer.

— 26.—*Pigeon* v. *Burslem*—Judgment for the plaintiff on demurrer to defendant's plea.

— 27. —*Ricketts* v. *Noble*—Rule to enter suggestion to deprive of costs discharged, with leave to apply to Court of Error.

— 27.—*Dobbs* v. *Penn*—Rule absolute for new trial.

— 27.—*Price* v. *Woodhouse*—Rule for new trial discharged.

— 27.—*Bank of England* v. *Johnson*—Rule discharged for leave to issue *fi. fa.* against members of Joint Stock Bank at the time that the contract was entered into on which the plaintiffs had recovered judgment.

Nisi Prius.

(*Coram* Denman, C. J.)

Cock v. *Innes*. Feb. 3, 1849.

CHARGES OF SHORT-HAND WRITERS.

A short-hand writer is not entitled to charge for transcripts from printed reports of cases where the notes are to be sent to an attorney.

In an action by a short-hand writer against a solicitor, to recover 46*l.* 14*s.* 4*d.*, balance of an account for 93*l.* 0*s.* 4*d.*, for taking notes, and making a transcript of proceedings in Chancery, "*In re Britton a bankrupt*," it appeared that the plaintiff charged at the rate of one guinea per day, for taking the notes, and 8*d.* per folio of 72 words. It was contended for the defendant that in Chancery and Bankruptcy 90 words and not 72 words made a folio,

and it was complained, that whenever counsel in the course of his argument cited a case, the short-hand writer transcribed the case from the printed report, charging at the rate already stated; so that the transcript cost more than the aggregate fees of counsel.

Lord *Denman*, in summing up, observed, that it was a great abuse for a short-hand writer to copy out the whole of a case from a law report. That might indeed be very necessary, if the transcript were going to be sent into a foreign country, where the law of England was unknown; but it was quite unnecessary in this case, where the transcript was going to an attorney, who could take the report down from his own book-shelf and read it. He thought, however, the defendant failed to prove that 90 words went to a folio, and the jury must therefore determine whether the rate of charge was reasonable, and make such deductions as they thought just. The jury gave their verdict for the plaintiff for 28*l.* 8*s.* 4*d.*

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PLEADINGS.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75.
Law of Costs, p. 35.
Law of Evidence, p. 56.
Law of Attorneys, p. 341.
Courts of Equity:
Law of Property and Conveyancing, p. 113.
Principles of Equity, p. 134.
Practice, 196.
Bankruptcy, 158.]

AMENDING BILL.

After one of several defendants has put in a sufficient answer, the plaintiff cannot obtain more than one order of course to amend, although the other defendants may not have answered. *Duncombe* v. *Lewis*, 10 Beav. 273.

See *Demurrer*, 5; *Plea*, 3; *Parties*, 7.

ANSWER.

1. *Insufficiency.*—If a defendant submits to answer a bill that is not demurrable, he must answer it fully, notwithstanding he denies the plaintiff's title, and sets up an adverse one in himself. *Dott* v. *Hoyes*, 15 Sim. 372.

2. *38th New Orders.—Interrogatories.*—Though a defendant submits to answer a bill to the whole of which he might have demurred, he is at liberty to protect himself, under the 38th General Order of August, 1841, from answering any of the interrogatories which he may think proper to decline to answer. *Mason* v. *Wakeman*, 15 Sim. 374.

3. *Exceptions for insufficiency.—General account of assets.*—In a suit against an assurance company by a party entitled to certain policies, and who claimed a lien on the funds of the company in respect of other policies, the company having paid the amount on the policies due, and by their answer denied that the plaintiff had any lien in respect of others, at the same time stating their funds were ample to pay all liabilities; *Held*, that the plaintiff was not entitled to call for a general account of the assets of the company. *Pritchard* v. *Murray*, 36 L. O. 488.

4. *Exceptions.—Impertinence.*—An auctioneer's list of timber on an estate, set out in the schedule to an answer, in answer to the interrogatory whether any and what timber had been cut down, is impertinent, although the remaining portion of the schedule is pertinent, and the answer is in itself sufficient. *Hitchcock* v. *Duke of Buckingham*, 36 L. O. 497.

See *Exceptions*, 1; *Supplemental Answer*.

DECREE.

See *Original Bill*.

DEMURRER.

1. *Specific performance of contracts requiring parliamentary powers.*—By an agreement between three incorporated railway companies, *A.*, *B.*, and *C.*, it was agreed that *A* should purchase the other two railways when completed, and that, in the meantime, their capitals should be amalgamated for the purpose of such completion, *A.* undertaking to supply any deficiency: and it was provided that all the three companies should concur in applications to parliament for the necessary powers to carry the agreement into effect. At the time the agreement was entered into, *B.* had power, with the consent of three-fifths of its shareholders, to sell its railway to *A.*, but *C.* had no such power, and neither *B.* nor *C.* had any power of amalgamation. The agreement was duly ratified by three-fifths of the shareholders in each of the three companies, and *C.* subsequently obtained an act giving it the required powers; but before a similar act was obtained by *B.* a large majority of its shareholders had become adverse to the project, so that no such act could be obtained; and the directors of that company, with the sanction of the shareholders, were proceeding to construct and dispose of their railway in a manner inconsistent with the agreement.

A demurrer to a bill filed by *A.* against *B.* and its directors, for specific performance of the agreement, and an injunction, was overruled and the injunction granted; it being clear that, for the completion of the purchase no further parliamentary powers were necessary, and it being at least doubtful whether the defendants could

be heard in this Court to say that the plaintiffs were not entitled to the performance of that part of the agreement merely because there was another part (viz., the provision for amalgamation,) which required additional parliamentary powers to give effect to it, which powers they refused to apply for. *Great Western Railway Company* v. *Birmingham and Oxford Junction Railway Company*, 2 Phill. 597.

Cases cited in the judgment: Edwards v. Grand Junction Railway Company, 1 M. & Cr. 650; Lord Bolingbroke's case, 1 Sch. & Lef. 19 (n.) *a*.

2. *Insolvent.* — *Collusion.* — Creditors of an insolvent cannot maintain a suit respecting property or rights alleged to have belonged to the insolvent, and to be vested in his assignee under the Insolvent Debtors' Acts, upon an allegation of collusion between the assignee and the party against whom the relief is prayed: and the same rule applies to suits for a similar object by the insolvent himself. *Heath* v. *Chadwick*, 2 Phill. 649.

Cases cited in the judgment: Yewens v. Robinson, 11 Sim. 105; Kaye v. Fosbrooke, 8 Sim. 28; Major v. Aukland, 3 Hare, 77; Sprugg v. Binkes, 5 Ves. 583; Benfield v. Solomons, 9 Ves. 77; Saxton v. Davis, 18 Ves. 72; Hammond v. Atwood, 3 Madd. 158; Barton v. Jayne, 7 Sim. 24.

3. *Bill to restrain proceedings for making plaintiff a bankrupt.*—Proceedings by a creditor under the 1 & 2 Vict. c. 110, s. 8, with a view to making the alleged debtor a bankrupt in default of his satisfying the demand, will not be interfered with in a Court of Equity on the ground merely of an allegation that such proceeding is dictated purely by fraud and malice, and that no debt is in fact due. *Pim* v. *Wilson*, 2 Phill. 653.

4. *Overruled by answer.*—More than 12 days after bill filed, a defendant filed a pleading, which was a demurrer, and also an answer to the whole bill: *Held*, that notwithstanding the 37th order of Aug. 1841, the answer overruled the demurrer, and that it was not necessary to move to take the pleading off the file as irregular. *Skey* v. *Garlike*, 1 De G. & S. 396.

5. *Orders of* 1845.—*Amendment.*—The 34th section of the 16th Order, and the 70th Order of May, 1845, as to the time allowed for amending a bill, apply to an order made on the allowance of a demurrer giving liberty to amend, if no time for amending is mentioned in the order. *Armistead* v. *Durham*, 37 L. O. 31.

6. *Parties.*—*Joint liability.*—Three partners dissolved partnership as to one, and the two jointly covenanted to pay all debts on which all were liable, and to pay the retiring partner 3,000*l.* by three yearly instalments. The debts were not paid, and after one instalment had been satisfied, one of the remaining partners died, leaving all his property to his widow and executrix. The retired partner filed his bill against the other partner and the executrix, for payment of two instalments, the debts of her testator and the debts of the partnership in a course of administration. The defendants separately demurred for want of equity, and that the bill was filed for distinct claims, and the same was allowed. *Wilmer* v. *Currey*, 37 L. O. 109.

7. *Want of equity.*—Circumstances in which the new shareholders of a company were held not entitled to maintain a suit. *Yetts and March* v. *The Norfolk Railway Company*, 37 L. O. 318.

See *Parties*, 5.

DISMISSAL.

See *Parties*, 7.

EXCEPTIONS.

1. *Insufficiency of answer.*—A bill alleged, that the defendant had received certain sums from *B.*, on behalf of the plaintiff, and asked whether the defendant did not, in fact, receive them, and whether on the plaintiff's behalf &c. The answer denied that the defendant had received these sums on behalf of the plaintiff: *Held*, that it was insufficient. Where particular facts are alleged, and there are sufficient inquiries founded on them, a general denial is sufficient where a bill alleges specific payments to defendant, by specific persons, at specific times, and the interrogatory asks generally, whether such or some other and what persons, at such or some other and what times, the Court will not enforce a discovery of all payments, by all persons, at all times, but will confine the discovery within reasonable limits. Difficulty in framing answers so as to escape the charge of insufficiency on the one hand, and redundancy or impertinence on the other. *Jodrell* v. *Slaney*, 10 Beav. 225.

2. *Numbering interrogatories.*—An exception to an answer, *held* to have been properly allowed, although it set out inaccurately the interrogatory, the answer to which was the subject of exception, there being, besides the inaccurate transcript of the interrogatory, a reference to it by its number. Semble, that the reference by number alone would be sufficient. *Esdaile* v. *Molyneux*, 1 De G. and S. 218.

See *Answer*, 3, 4.

IMPERTINENCE.

See *Answer*, 4.

INTERROGATORIES.

See *Answer*, 2; *Exceptions*, 2.

MUNICIPAL CORPORATIONS.

Under the Municipal Corporation Act, the corporation of a city ought to be styled, The Mayor, Aldermen, and Citizens of the City. *Rochester, Corporation of*, v. *Lee*, 15 Sim. 376.

ORIGINAL BILL.

Decree.—A testator devised and disposed of his English and Scotch estates, in strict settlement, and he directed his trustees and the survivor, and the executors, administrators, and assigns, of such survivors, to invest his personal estates in lands in England or Scotland, to be settled according to the uses of his

estates in those countries respectively. And he empowered the person for the time being in possession of his English estates, or his guardian, to appoint new trustees, who were to have the same powers as the old. After the testator's death, the principal part of the property was invested in Scotland. In 1833, the trustees being all dead, the representative of the survivor declined to act. The English estate then stood limited to *A.*, an infant, in tail, with remainders over, and the Scotch estate to *A.*, for an unalienable estate in fee, with remainders to his heirs male, with remainder to *B.*, *C.*, *D.*, &c., the plaintiff and others, for similar unalienable estates in succession. In 1833, *A.* filed a bill against the representative of the surviving trustees, and against *B.*, and some other parties, coming subsequent in the Scotch estate to the plaintiff, but omitting the plaintiff, insisting that too much of the personalty had been invested in Scotland. *B.* appeared voluntarily and put in his answer. Before the decree, *A.* had a guardian appointed, and by the decree made in 1833, the existing trustee, at his own request, was discharged, and the Master was directed to appoint new trustees; and it was declared, that the uninvested personalty ought to be inserted in England. *A.* afterwards executed disentailing deeds, and obtained payment of the whole fund. By the death of *A.* and the other preceding persons without issue, plaintiff became entitled in possession to the Scotch estates, and he thereupon instituted this suit to be relieved from the decree of 1833: *Held*, that he was not bound by that decree, and, secondly, that he was entitled to obtain relief by original bill. *Fordyce* v. *Bridges*, 10 Beav. 90.

PARTIES.

1. *Suit on behalf of plaintiff and others.*—A plaintiff filed a bill on behalf of himself and others, shareholders in a railway company, to restrain the directors committing a breach of trust. It appeared that he was suing at the instigation of another rival company: *Held*, that this circumstance was not of itself sufficient to prevent him from obtaining a special injunction on the merits of the case. *Colman* v. *Eastern Counties Railway Company*, 10 Beav. 1.

2. *39th Order of 1841.*—The decision of the Court, under the 39th Order of 1841, upon the argument of an objection for want of parties, cannot be final. The Court exercises a discretion in such cases, as to determining the validity of the objection, and will, in a proper case, overrule the objection, without prejudice to the defendant's right to raise the same point at the hearing. *Welham* v. *Welham*, 9 Beav. 247.

3. *Trustee.—Agent.*—Trustees authorized to carry on a trade, permitted it to be carried on by agents: *Held*, that the agents were not necessary parties to a bill for the administration of the estate. *Ling* v. *Colman*, 10 Beav. 370.

4. *Widow.—Trustees.*—A widow concurred in breach of trust, but her interest in the testator's estate had been separated: *Held*, that she was not a necessary party to a suit by a *cestui que trust* not seeking to charge her interest, and that the trustees, seeking to charge her interest, must make their equity effective by some proceeding of their own. *Ling* v. *Colman*, 10 Beav. 370.

5. *Railway company.—Demurrer.*—A joint-stock company was formed for making a railway, but, some time afterwards, the project was abandoned. One of the shareholders then filed a bill, *on behalf of himself and all the other shareholders*, except the members of the managing committee, who were made defendants, praying for an account of the monies received, and the expenses properly incurred by the defendants, on account of the company; that the plaintiffs, *and the other shareholders, might be declared liable to contribute* to such expenses in proportion to the number of their shares, or in such other proportion as the Court should think just; and that such proportion might be deducted out of the deposits on their shares, and the residue be repaid to them; and *that the surplus of the monies in the hands of the defendants*, after discharging the debts and liabilities of the company, *might be applied in aid of the objects of the suit, as the Court should direct.*

A demurrer to the bill, for want of equity and want of parties, was overruled. *Cooper* v. *Webb*, 15 Sim. 454.

Case cited in the judgment: Apperly v. Page, 1 Phill. 779.

6. *National Debt Commissioners.—Retransfer of funds.*—To a suit of three out of four residuary legatees, to recover three-fourths of a sum of stock which the executors had omitted to get in, and which had been transferred to the commissioners for the reduction of the National Debt, under the stat. 56 G. 3, c. 60, the legatee entitled to the other fourth part of the stock is a necessary party. *Hunt* v. *Peacock*, 6 Hare, 361.

7. *Amendment.—Dismissal.*—Where a cause is, at the hearing, ordered to stand over, with liberty to plaintiff to amend by adding parties, and no further proceedings are taken, the proper course for the defendant is to move, upon notice, that the bill be amended within a certified time, or that it be dismissed; and not to move that it be dismissed simply. *Emerson* v. *Emerson*, 6 Hare, 442.

8. *Cestui que trust.*—In a suit against trustees of a fund for its restoration, it must be shown that all the parties interested in the fund, and the individuals of each class interested, are made parties before the suit can be heard on the merits. *Phillipson* v. *Gatty*, 37 L. O. 111.

See *Demurrer*, 6.

9. *Answer.—Orders of August of Aug.* 1841.—The Court refused to come to any decision upon a defendant's objection for want of parties, under the 39th Order of Aug. 1841, in a case where the decision as to that point was liable to be affected by the decision upon other matters in dispute in the case. *Lewis* v. *Baldwin*, 37 L. O. 176.

PLEA.

1. *Time to answer.—Application to the Master.*—A defendant, residing abroad, had obtained two orders from the Master for time "to answer," not including the expression that leave was given "to plead or demur." The defendant's solicitor, on application for a third order, produced before the Master a document, which he stated was the draft of an answer, which answer would be filed without delay, and the Master gave two months' further time. The defendant afterwards filed a plea to the bill: *Held*, that the plea was an answer, and satisfied the terms of the orders giving time to answer. *Hunter* v. *Nockolds*, 6 Hare, 12.

Case cited in the judgment: Brooks v. Purton, 1 Y. & C., C. C. 278.

2. *Outlawry.*—After a plea of outlawry of the plaintiff, the outlawry was reversed, and it was held, that the plaintiff was entitled to an order of the Court for the issue of a new subpœna against the defendant, and that, upon service of such subpœna, and payment of 20*s.* costs, (as directed by Lord Clarendon's order,) the defendant should answer the bill, and that the costs of the motion must be paid by the plaintiff. *Hunter* v. *Nockolds*, 6 Hare, 459.

3. *Amending bill.—Orders of May*, 1845.—Upon a bill for discovery and relief, a plea to all the relief, but not in form to all the discovery, is not a plea to "the whole bill," within the meaning of the 48th and 49th Orders of May, 1845; and where, after the expiration of three weeks, a defendant having so pleaded to all the relief but not to all the discovery, obtained as of course an order to dismiss the bill: *Held*, that such order was irregular.

An order to amend after a plea to all the relief, and an answer to the discovery asked by a bill, is not to be obtained as of course under the 66th Order of May, 1845, and an order so obtained was discharged with costs. *Neck* v. *Gains*, 1 De G. & S. 223.

REPLICATION, WITHDRAWING.

After witnesses had been examined, the Court refused to allow the replication to be withdrawn against one of the defendants, for the purpose of examining him generally in the cause. *Hitchcock* v. *M'Vicars*, 36 L. O. 311.

REVIVOR AND SUPPLEMENT.

General Orders.—A bill of revivor and supplement is within the 23rd and 24th Orders of August, 1841. *Walcot* v. *Walcot*, *Walcot* v. *Fosbery*, 10 Beav. 20.

SUPPLEMENTAL ANSWER.

Where the ground on which an injunction had been granted was displaced by matters which occurred subsequently to the filing of the answer, the Court refused to dissolve the injunction on an affidavit of those matters, but gave leave to the defendant to introduce them upon the record by a supplemental answer. *Stamps* v. *Birmingham and Stour Valley Railway Company*, 2 Phill. 673.

BUSINESS OF THE COURTS.

LIST OF APPEALS IN THE HOUSE OF LORDS.

SESSION 1849.

Bain *v.* Black.—*Scotland.*
Livingstone *v.* Proudfoot.—*Scotland.*
Scott *v.* Scott.—*Scotland.*
1*st appeal*, Fraser *v.* Lord Lovat.—*Scotland.*
M'Farlane *v.* Currie (or M'Farlane).—*Scotland.*
Abated, The Caledonian Railway Company *v.* Hamilton.—*Scotland.*
Bonar *v.* Macdonald.—*Scotland.*
Dykes *v.* Struthers.—*Scotland.*
Abated, Mansell *v.* White, Chy.—*Ireland.*
Baker *v.* Tucker, Chy.—*Ireland.*
Piers *v.* Piers, Chy.—*Ireland.*
M'Ewan & Co. *v.* Smith & Co.—*Scotland.*
Rochfort *v.* Battersby, Chy.—*Ireland.*
Matheson and Son *v.* Ross.—*Scotland.*
Malcom *v.* Northern Reversion Company.—*Scotland.*
Gregory *v.* Duke of Brunswick, Exch. Chamber.—*England.*
Lamsden *v.* Duff.—*Scotland.*
Wemyss *v.* Wilson.—*Scotland.*
Livesey *v.* Livesey, a lunatic, Chy.—*England.*
Writ of error, Webster *v.* Papps, Exch. Chamber.—*England.*
Cleland *v.* Weir (or Fleming).—*Scotland.*
Archbold *v.* Commissioners of Charitable Bequests for Ireland, Chy.—*Ireland.*
Robertson (or Rennie) *v.* Morison.—*Scotland.*
Herring *v.* Clabery, Chy.—*England.*
Inglis *v.* Boswall.—*Scotland.*
M'Gregor *v.* Topham, Chy.—*England.*
Murray *v.* Graham.—*Scotland.*
Wemyss *v.* Dryadale.—*Scotland.*
Rev. T. Simpson *v.* Graham.—*Scotland.*
1*st appeal*, Smith *v.* Officers of State of Scotland.—*Scotland.*
2*nd appeal*, Same *v.* Same.—*Scotland.*
Barnes *v.* Pennell.—*Scotland.*
Dewar (or Dewar Burden) *v.* Cleghorn, otherwise Mitchell Burden.—*Scotland.*
Rev. Dr. Brunton *v.* Sir J. Forrest, Bart.—*Scotland.*
Smyth *v.* Darley, Chy.—*Ireland.*
The Earl of Lauderdale *v.* Mitchell.—*Scotland.*
Kippen *v.* Appenheim.—*Scotland.*
Petrie, (pauper) *v.* Lord Grey.—*Scotland.*
Rutherford *v.* Sir P. M. Triepland, Bart.—*Scotland.*
The Duke of Roxburg *v.* Miss J. W. Ramsay.—*Scotland.*
Irvine *v.* Kirkpatrick.—*Scotland.*
Dunn *v.* Lord Blantyre.—*Scotland.*
2*nd appeal*, Fraser *v.* Lord Lovat.—*Scotland.*
Toomey, (pauper) *v.* White, Chy.—*Ireland.*

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DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 10, 1849.

——"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

NEW BILLS BEFORE PARLIAMENT.

In addition to the Bills depending in either Houses of Parliament, abstracts or full copies of which have already appeared in this publication, certain others have come to hand, with the scope and effect of which it is desirable that our readers should have an early acquaintance.

Giving precedence to a measure presented to the Upper House, we may notice in the first instance Lord Campbell's

LARCENY ACTS' AMENDMENT BILL.

Those who have paid attention to criminal legislation are aware, that by an act passed in the 8th of Geo. 4, for England,[a] and in the 9th of Geo. 4, for Ireland, persons convicted of simple larceny or of felonies made punishable by those acts, like simple larceny, are liable to be punished at the discretion of the Court with transportation for seven years, or imprisonment with or without hard labour not exceeding two years, whipping, and solitary confinement for a limited period. It appears, from returns recently presented to the House of Lords, that the number of cases in which the various Courts entrusted with the trial of criminals, have, in the exercise of their discretion, deemed the punishment of transportation proper to be awarded in cases of simple larceny, is considerable, and that in some cases sentence of transportation has been passed, where the party convicted was not charged with a previous conviction for felony, and therefore, for aught that appeared, the conviction which led to the punishment of transportation, might have been for a first offence. In 1845, the total number sentenced to be transported for simple larceny in England and Wales, was 1,361; in 1846, 1,330, and in 1847, 1,180. The number transported for what appeared to be a first offence, in these years was: in 1845, 477; in 1846, 429, and in 1847, 345. The total number of transportations, as well as the number transported for a first offence, therefore, appears to have diminished during the period over which the return extends, and the diminution is not to be ascribed to a proportionable diminution in the total number of convictions for simple larceny, as we find by the returns, that in 1845, the number convicted of simple larceny in England and Wales, was 10,260; in 1846, 10,728, and in 1847, 10,577. That fewer persons have been sentenced to transportation, therefore, for the offence of simple larceny in 1847 than in 1845, indicates, as we infer, that those on whom the administration of criminal justice devolves, have felt an increasing indisposition to subject convicted persons to this description of punishment, and affords some degree of assurance that the discretion with which they are invested is not likely to be abused by sentencing convicted persons to transportation. Lord Campbell, however, proposes by the bill in question to deprive the Criminal Courts of all discretionary power in awarding sentences of transportation upon

[a] Stat. 7 & 8 Geo. 4, c. 29, ss. 3, 4.

a conviction for simple larceny. After reciting the acts 8 & 9 Geo. 4, already alluded to, he proposes to enact:—

"That from and after the first day of September, 1849, so much of the recited provisions of the said acts respectively, as makes any person convicted of simple larceny, or of any felony by such acts respectively made punishable like simple larceny, (except in the cases hereinafter otherwise provided for) liable to be transported beyond the seas for the term of seven years, shall be repealed; but every person so convicted shall be liable, at the discretion of the Court, to be otherwise punished as by the said acts respectively is provided."

Considering what a vast variety of offences are comprehended within the description of simple larceny, and the infinite diversity of circumstances under which offences of this nature are committed, whilst the punishment of transportation is continued, we very much question the expediency of depriving Courts of Criminal Jurisdiction of the power of awarding this sentence in cases of simple larceny attended with circumstances of peculiar aggravation. We are not insensible to the existence of a great difference of opinion upon the subject, but our information leads to the conviction, that transportation is the only secondary punishment which is attended with terror to the largest and most dangerous class of offenders, those who live by habitual depredations upon the property of others. We trust, that when this bill finds its way into the House of Commons, the expediency of the proposed alteration will be inquired into, and fully explained and discussed.

COSTS OF DISTRESSES FOR RATES BILL.

A bill has been brought into the House of Commons by the Attorney-General and Solicitor-General, "to enable Overseers of the Poor and Surveyors of the Highways to recover the Costs of Distraining for Rates."

It appears, that under the existing law, although any sum to which a person is assessed or rated for the relief of the poor, or for the highways, may be recovered by distress, and in default of distress, by commitment; no sufficient provision exists for levying the costs and expenses incurred by overseers of the poor and surveyors of highways. To recover this, it is proposed to enact,

"That it shall be lawful hereafter for all justices of the peace, in any warrant of distress they shall make and issue for any levying of any sum or sums to which any person or persons is or are now or may hereafter be rated or assessed in or by any rate or assessment for the relief of the poor or for the highways in England or Wales, or in or by any other rate or assessment which by law now or hereafter is or shall be directed to be enforced or recovered in the same manner as a poor-rate, or in any warrant for the levying of any arrears of the same, to order that a sum, such as they may deem reasonable, for the costs and expenses which such overseers or surveyors, or the persons applying for such warrant, shall have incurred in obtaining the same, shall also be levied of the goods and chattels of the person or persons against whom such warrant shall be granted, together with the reasonable charges of the taking, keeping, and selling-off the said distress; and every warrant of commitment made or issued for default of distress aforesaid, shall be made as well for the non-payment of such costs and expenses, and the costs attending the said distress, and also the costs and charges of taking and conveying the party to prison, (the amount of such several costs, expenses, and charges being stated in such warrant of commitment,) as for the non-payment of the sum or sums alleged to be due for the said rates respectively."

By subsequent sections of the bill it is provided, that one warrant of distress may be issued against any number of persons neglecting to pay for rates and costs; but not one warrant of commitment against several in default of distress; that warrants may be directed to overseers and surveyors, and to the constable, or to any one or more of them; and that complaint may be made to any *one* justice, and a summons, or warrant of commitment in default of distress, granted by him. The schedule of the act prescribes forms of complaint, of summons, and of warrant of distress, against one and also against several rate-payers.

We understand this bill has already undergone some alterations in committee, the precise object and effect of which we hope to be able to find an early opportunity of noticing.

OVERSEERS (CITIES AND BOROUGHS) BILL.

It seems, that some doubts are entertained as to the proper authority for the appointment of overseers of the poor, in certain cities and boroughs having corporate officers, under the provisions of the 43rd Eliz., and those doubts, if well founded, would necessarily affect the validity of rates and other acts done by overseers not properly appointed. To remove those doubts, a bill has been prepared and brought into the Commons by Mr. Baines (the President of the Poor Law Board) and Lord Ebrington, conferring the exclusive right of ap-

pointing overseers of the poor, on the justices of the peace, in all localities, except the City of London, and places where the appointment of overseers is regulated by some local act. The most material enactment proposed by the new bill, is as follows:—

"That in every city, town corporate, or borough, the justices of the peace having jurisdiction therein, shall have the exclusive right of appointing the overseers of the poor of the several parishes, townships, or other places, separately maintaining their own poor, or of any parts thereof within the said cities, towns corporate, and boroughs respectively, in like manner, and with the same effect as the justices of any county now have, in respect of the overseers of the poor of any such parish within such county, and they are hereby required from time to time to make such appointments accordingly."

The second section repeals so much of the act of Eliz. as imposed a penalty of 5*l.* on the mayors, aldermen, or head officers of corporate towns, on the default of the appointment of overseers.

Sec. 3 provides, that the appointment of overseers by justices of the peace, without the concurrence of corporate officers, as well as all rates and assessments made and things done, by overseers so appointed, shall be valid; whilst the 4th section declares, that the act is not to apply to the City of London, or to any parish, town, or place, where the appointment of overseers is regulated by any local act.

The ministerial duties which the law imposes, upon persons filling the office of overseers, are of so much importance, that the President of the Poor Law Board would have been inexcusable if he suffered any legal doubt to exist as to the power of appointing those officers, and we look upon the early introduction of this measure as a presage of the vigilance and attention which we hope hereafter to see uniformly displayed, and extended to all matters connected with the administration of the laws for the relief of the poor.

MISCELLANEOUS BILLS.

Mr. Cornwall Lewis, having withdrawn the bill originally introduced by him, for altering and amending the Laws relating to Turnpike *Roads and Highways*, (which embodied a proposition for the gradual liquidation of the sums secured by mortgage on the turnpike tolls,) and having substituted another bill, differing in many important particulars, it will be more convenient to defer any notice of the measure until the print of the second bill has been delivered.

The Bill for "the *Prevention of Bribery* at Elections," introduced by Sir John Pakington; and that prepared and brought in by Mr. Wood, Sir E. W. Buxton and Mr. Bouverie, "to enable persons who refuse on religious grounds to be sworn, to substitute an *Affirmation* for an Oath," will also be analysed and considered on a future occasion.

THE BANKRUPT LAW CONSOLIDATION BILL.

It may be a matter of laudable ambition on the part of Lord Brougham, that he should go down to posterity with "a code in his hand" on the Law of Bankruptcy, Insolvency, and Debtors and Creditors in general; the latter class comprehending pretty well all classes of the community. We much approve the plan of repealing all previous statutes, and including them, with alterations, amendments, and additions, in one chapter of our Statute Book; but the consolidation of the whole Law of Debtor and Creditor is a vast undertaking, requiring the combination of various powers, theoretical and practical. Within a few years, new *Courts* have been established, altered, abolished, and re-modelled;—the *practice* and mode of procedure have been changed;—the *principles*, also, in many important respects, have been subjected to revision, much to the perplexity and inconvenience of the trading and commercial classes. It is time, indeed, that the law and practice should be settled, but we cannot say that the bill before the House of Lords is calculated fully and satisfactorily to effect this object. It contains several useful improvements, but incumbered with many dangerous novelties, and, we believe, impracticable provisions.

The bill has been brought in early, and we hope that all the useful parts of it may be settled and passed during the present Session; but there are many serious objections to some important details, and we trust due time will be given for their consideration and discussion. If not, the same fate, we venture to prophesy, will attend this bill as followed many others during the last few years.

FEES OF COURTS OF LAW AND EQUITY.

A SELECT Committee was appointed, on the 20th February, on the motion of Mr. Bouverie, "to inquire into and report to the House on the Taxation of Suitors in the Courts of Law and Equity by the collection of Fees, and the amount thereof, and the mode of collection, and the appropriation of Fees in the Courts of Law and Equity, and in all Inferior Courts, and in the Courts of Special and General Sessions in England and Wales, and in the Ecclesiastical Courts and Courts of Admiralty; and as to the Salaries and Fees received by the Officers of those Courts, and whether any and what means could be adopted with a view of superintending and regulating the collection and appropriation thereof."

On the 27th February, the following Committee were nominated:—Mr. Bouverie, Mr. Solicitor-General, Sir Frederic Thesiger, Sir James Graham, Mr. Walpole, Mr. Stuart Wortley, Mr. Hume, Mr. Henley, Sir William Molesworth, Mr. Clifford, Mr. Headlam, Mr. Wood, Mr. Turner, Mr. Roundell Palmer, and Mr. Ewart. Power to send for persons, papers, and records. Five to be the quorum.

The Committee on this very important inquiry have not yet assembled, and we have not heard the course of proceeding intended to be adopted. It will, we submit, be very material that some practical members of the profession should be called in to assist the learned members of the Committee in the several details of the inquiry.

The reduction of fees and the abolition of sinecures are very important measures in the progress of Law Reform. The large outlay of practitioners constitutes, not only a great burden upon themselves and the suitors, but often operates as a total barrier to justice.

THE ATTORNEYS' CERTIFICATE DUTY.

WE observe that a few Petitions only have yet been presented for the repeal of this tax: one from Plymouth was the last. A large number of petitions will, we understand, be in readiness, so soon as a day can be fixed for bringing in the bill. It is yet in good time to commence the proceedings in parliament, and, considering the very large body who are interested in the question, scattered over upwards of a thousand towns and cities, the arrangements cannot, of course, be very speedily completed. We trust, however, that there will be as much speed as circumstances will permit. The large number who congregate at the several Assizes may, in some respects, materially assist the movement, and yet,—deeply engaged as they are in their clients' business,—we should not be surprised if many, at least, do not neglect their own.

Those who are taking the pains to urge forward again this most just measure, ought to be aided and supported by their brethren in general.

THE REGISTRATION OF DEEDS' BILL.

THE second reading of this bill was moved for on Wednesday, the 7th instant, by Mr. *Henry Drummond*, who urged that our Law of Real Property was derived from the feudal law, and that the ingenuity of lawyers had raised a highly artificial and complicated system out of its simple elements. Every attempt to free this part of the law from its cumbersome and expensive machinery had been hitherto futile, and landowners were completely in the hands of their solicitors, signing and sealing as they were bid, without knowing anything about their own titles. This old system must be cut up by the roots; an effort must be made to deliver themselves out of the hands of their solicitors, and the only way was by a system of registration and of making transfers of landed property by means of entries in a book. The first question was, who was to register? If the owner, he would be called upon to prove his title; and if examinations of titles were required, there must be a new Court of Chancery, as without examination the owner would be at the mercy of attorneys. In most cases substantial justice would be done by passing a declaratory act that, from a certain time, every man should have a parliamentary title to his estate. In framing this bill, he had determined to make the registration voluntary. Compulsory registration might be objected to, and by making it voluntary a foundation would be laid for altering the whole body of the law in a cautious and gradual manner. Some measure of this kind must be taken if landed proprietors desired to increase the value of their land, and all now asked was, that the House would affirm these two points,—first, that there should be a registration of landed property; and, secondly, that the transfer of such property should be made, not by 70 sheets of parchment, but just like transfer of stock.

The *Solicitor-General* said, there was no difference of opinion amongst lawyers as to the evils attending our system of complicated titles, nor as to the desirableness of remedying them. The only difference was as to the means of carrying this object into effect. When Mr. Drummond introduced this bill, he (the Solicitor-General) professed his desire to assist him; but from the consideration he had given to the bill, he believed that, if carried into effect, the only persons benefited would be the whole class of lawyers. In a measure for the registration of titles to lands, one of two courses might be adopted—either to create an entirely new system, or to frame a plan adapted to the existing state of the law. Mr. Drummond's combined both; or if he had devised a new scheme, some lawyer had adapted it to the existing state of the law. The Solicitor-General then pointed out that the bill did not say what was to be registered, and it conferred upon a party registered, after 30 years of possession, the absolute ownership of an estate, to the exclusion of all contingent or remainder interests, thereby opening a door to fraud. The register was not to be an open one, and a party was not to be at liberty to make a personal search without an order of Court, and as there must be a power to contest the order, to ascertain the fact whether a stranger had registered a title to an estate, there must be a suit to establish the right to search the register. With the most sincere desire to make this an effectual bill, he saw no possibility of doing so, either in its plan or its details; and he recommended Mr. Drummond to withdraw it, and to reconsider the subject after the report of the Registration Commission should be made, which was shortly expected.

Mr. *Wood* feared, from the speech of the Solicitor-General, that we were still at an indefinite distance from that desirable object, a general registration, which the commission of 1832 reported was "imperatively demanded." Mr. Drummond had not done the lawyers justice, since they were the only persons who, from the time of Sir Matthew Hale, had agitated the question, and their determined opponents had been the country gentlemen. Many of the objections of the Solicitor-General applied to the details, not to the principle, of the bill. This was the only civilized country in the world without a general register, which in Belgium and France added four or five years' purchase to the value of land compared with its value in this country. Mr. Wood replied to several objections of the Solicitor-General, and observed that he did not think the House would be justified in parting with this bill, unless they had some definite assurance that the Government were about to take up a subject of such great public importance.

Sir *G. Grey* thought the Government could not pledge itself to take this subject up until the Registration Commissioners had made their report; but the Government were fully sensible of the importance of a system of registration, and were prepared to give effect to the recommendation of the Commissioners.

Mr. *Mullings* believed that the working of this bill would be attended with infinitely greater expense than in the present state of the law, since the abolition of fines and recoveries.

After the Attorney-General and several other members had addressed the House the second reading was carried by 55 to 45. The bill was then ordered to be referred to a select committee.

MOOT POINTS.

WRITS.—JOINDER OF NAMES.

ANY number of defendants may be included in a writ, provided they all reside in the same county, but if in different counties, there must be as many writs as there are counties in which the defendants reside.

STUDIOSUS.

The several writs will form but one action.

T. W. H.

COPARCENERS.

Mary, the daughter of William Johnson, the purchaser, *inherited*, with her sister, the estate in question as coparceners; and, upon Mary's death intestate, (assuming her father to have died since the act 3 & 4 W. 4, c. 106, came into operation, which was not the fact in the case mentioned by "A Subscriber,") her share would not wholly descend to her issue, but to the heirs of the purchaser, William Johnson, whose heirs would be the surviving daughter and the issue of Mary. Mary, although the person last entitled, is proved to have *inherited*, and therefore the lineal descent on her death must be traced, not from her, but from the father as the last purchaser.

Your correspondent of the 24th February observes, "I cannot see how William Johnson can become the root from which he must start in search of the heir of Mary, the person last entitled." He seems to overlook the fact that Mary *inherited*, and that consequently her heir is not the proper party to seek. I would refer your correspondent to the last edition of Shelford's Real Property Statutes, and the learned editor's note on the second section of the act before referred to.

LIST OF SHERIFFS, UNDER-SHERIFFS,

COMPILED BY LEONARD LAIDMAN.

WARRANTS are granted in Town for Breconshire, the Borough of Carmarthen, Cardiganshire, Derbyshire, Durham, Gloucestershire, Gloucester City, Herefordshire, Kingston-upon-Hull, in the Welsh Counties, not before named.

Office Hours, in Term, from 11 till 4;

ENGLAND.

Counties, &c.	*Sheriffs.*
Bedfordshire	Humphrey Brandreth, of Houghton Regis, near Dunstable, Esq.
Berkshire	Robert Gibson, of Sandhurst-lodge, Esq.
Berwick-upon-Tweed	Patrick Clay, of New Water-haugh, Berwick-upon-Tweed, Esq.
Bristol, City of	Peter Maze, jun., of Bristol, Esq.
Buckinghamshire	John Kaye, of Fulmer, near Gerard's-cross, Esq.
Cambridge and Hunts	Ebenezer Foster, of Anstey House, Trumpington, Esq.
Canterbury, City of	William Sladden, of 24, Castle-street, Canterbury, Esq.
Cheshire	Thomas William Tatton, of Withenshaw, Esq.
Chester, City of	Robert Turner, of Nicholas-street, Chester, Esq.
Cinque Ports	His Grace the Duke of Wellington
Cornwall	Sir Samuel Thomas Spry, of Tregolls, near Truro
Coventry, City of	Act 5 & 6 Vict. c. 110, s. 10, abolished the Office of Sheriff for this City, and
Cumberland	Andrew Fleming Huddlestone, of Hutton John, Penrith
Derbyshire	Jedediah Strutt, of Belper, Esq.
Devonshire	Montagu Edmund Newcombe Parker, of Whiteway, Esq.
Dorsetshire	William Parry Okeden, of Turnworth, near Blandford, Esq.
Durham	John Eaden, of Beamish-park, Esq.
Essex	Onley Savill Onley, of Stisted-hall, Esq.
Exeter, City of	Thomas Floud, of 5, Bedford-circus, Exeter, Esq.
Gloucestershire	William Philip Price, of Tibberton-court, Esq.
Gloucester, City of	Benjamin Nankivelle Tripp, of Glouceater, Esq.
Hampshire	William Garnier, of Rookesbury-park, Wickam, Esq.
Herefordshire	William Barneby, of Clater, near Bromyard, Esq.
Hertfordshire	Abel Smith, of Woodhall-park, Watton, near Ware, Esq.
Huntingdon & Cambridge	Ebenezer Foster, of Anstey-house, Trumpington, Esq.
Kent	William Masters Smith, of Camer, near Gravesend, Esq.
Kingston-upon-Hull	John Gleadow Fearne, of West-parade, Esq.
Lancashire	John Smith Entwistle, of Foxholes, Rochdale, Esq.
Leicestershire	John Goodacre, of Lutterworth, Esq.
Lincolnshire	James Whiting Yorke, of Walmsgate, Esq.
Lincoln, City of	Charles Allison, of Lincoln, Esq.
Lichfield, City of	Sinckler Chinn, of Lichfield, Esq.
London, City of Middlesex	Thomas Quested Finnis, of 79, Great Tower-street, Esq. Jacob Emanuel Goodhart, of Doughty-street, Mecklenburgh-square, Esq.
Monmouthshire	John Arthur Herbert, of Llanarth-court, Esq.
Newcastle-upon-Tyne	Nathaniel Grace Lambert, of Newcastle-upon-Tyne, Esq.
Norfolk	William Mason, of Necton, Esq.
Norwich, City of	Robert Chamberlin, of Norwich, Esq.

DEPUTIES, AND AGENTS, FOR 1849.

Under-Sheriff's Account Agent.

Flintshire, Merionethshire, Radnorshire, and all places except Canterbury, Cinque Ports, Chester, cashire, Lichfield City, Monmouthshire, Poole, Southampton, Worcester City, York City, and

and in Vacation, from 11 till 3.

ENGLAND.

Under-Sheriffs.	*Deputies and Town Agents.*
Edward Chilwell Williamson, of Luton, Esq. ..	Messrs. G. T. and W. Taylor, 18, Featherstone-buildings, Holborn.
John Jackson Blandy, of Reading, Esq. ..	Messrs. Gregory, Faulkner, Gregory and Skirrow, Esq., 1, Bedford-row.
Robert Home, of Berwick, Esq.	Joseph Warner Bromley, 1, South-square, Gray's-inn.
William Ody Hare, of Bristol, Esq.	Messrs. Bridges, Mason and Bridges, 23, Red Lion-square.
James James, of Aylesbury, Esq.	William Meyrick, 2, Furnival's-inn.
Ebenezer Foster, jun., of Cambridge, Esq. ..	Messrs. J. and C. Cole, 4, Adelphi-terrace.
Robert George Chipperfield, of Canterbury, Esq.	Thomas Kirk, 10, Symond's-inn.
J. R. Lingard, of Stockport, Esq., (A. U. John Hostage, of Chester, Esq.)	Messrs. Bower and Son, 46, Chancery-lane.
John Walker, of Chester, Esq.	Messrs. Chester, Toulmin and Chester, 11, Staple-inn.
Thomas Pain, of Dover, Esq.	Messrs. Wright and Kingsford, 23, Essex-street, Strand.
Peter Glubb, of Liskeard, Esq.	Messrs. Capes and Stuart, 1, Field-court, Gray's-inn.
Warrants are now granted	By the Sheriff of Warwickshire.
Lawrence Harrison, of Penrith, Esq.	Thomas Johnston, 11, Staple-inn.
Francis Jessopp, of Derby, Esq.	Messrs. Smedley and Rogers, 40, Jermyn-street, St. James's.
William Richard Bishop, of Exeter, Esq. ..	William Harris, 5, Stone-buildings, Lincoln's-inn.
Edward Castleman, of Wimborne, Esq.	Gilbert Stephens, 13, Northumberland-street, Charing-cross.
W. E. Wooler, of Durham, Esq.	H. M. Vane, Carlton-chambers, 12, Regent-street.
A. C. Veley, of Braintree, Esq., (A. U. Messrs. Gepp and Veley, of Chelmsford)	Messrs. J. W. Bromley and Aldridge, 1, South-square, Gray's Inn.
Henry Wilcocks Hooper, of 12, Bedford-circus, Exeter, Esq.	John Elliott Fox, 40, Finsbury-circus.
John Burrup, of Berkeley-st., Gloucester, Esq. ..	Messrs. White, Eyre and White, 11, Bedford-row.
Anthony Gilbert Jones, of Gloucester, Esq. ..	Richard Alfred Goodman, 3, Serjeant's-inn, Fleet-st.
C. J. Gunner, of Bishops Waltham, Esq. (A. U. C. Seagrim, Winchester, Esq.)	George Lewis Phipps Eyre, 1, John-street, Bedford-row.
Thos. Barneby, of Worcester, Esq. (A. U. Frs. Lewis Bodenham, of Hereford, Esq.) ..	Messrs. Overton and Hughes, 25, Old Jewry.
Messrs. Longmore and Sworder, of Hertford, ..	Messrs. Hawkins, and Co. 2, New Boswell-court.
Ebenezer Foster, jun. of Cambridge, Esq. ..	Messrs. J. and C. Cole, 4, Adelphi-terrace.
George Essell, of Rochester, Esq.	Messrs. Palmer, France and Palmer, 24, Bedford-row.
John Hewitt Galloway, of 23, Bishop-lane, Esq. ..	Messrs. Hicks and Marris, 5, Gray's-inn-square.
L. Peel, of Liverpool, Esq. (A. U. Messrs. Wilson, Son & Deacon, of Preston,)	Messrs. Wigleworth and Co. 5, Gray's Inn.
Robert William Fox, of Lutterworth, Esq. ..	Messrs. Campbell and Witty, 21, Essex-street, Strand.
F. Thirkill White, of Boston, Esq. (A. U. H. Williams, of Lincoln, Esq.)	Messrs. Abbott, Jenkins and Abbott, 8, New-inn.
Richard Mason, of Lincoln, Esq.	Messrs. Taylor and Collinson, 28, Great James street, Bedford-row.
John Philip Dyott, (Dyott and Son,) of Lichfield, Esq.	Messrs. R. M. and C. Baxter, 48, Lincoln's-inn-fields.
James Edward Sherman, of 25, Great Tower-street, Esq.	Secondaries' Office, 5, Basinghall-street.
George Tamplin, of 159, Fenchurch-street, Esq. ..	Messrs. J. & W. Burchell, 24, Red Lion-square.
Charles Blount, of Usk, Esq.	Messrs. White, Eyre and White, 11, Bedford-row.
Richard Lambert, of Newcastle-upon-Tyne, Esq. ..	Messrs. Bell, Brodrick and Bell, 9, Bow-church-yard.
F. J. Blake, of King-street, Norwich, Esq. (A. U. Messrs. A. Taylor & Son, Norwich) ..	J. W. Flower, 61, Bread-street, Cheapside.
Arthur Dalrymple, of Norwich, Esq.	Messrs. Bircham, Dalrymple and Drake, 46, Parliament-street.

Northamptonshire	Henry Neville, of Walcot, Esq.	
Northumberland	John Hodson Hinde, of Stellinghall, Esq.	
Nottinghamshire	Granville Harcourt Vernon, of Grove, Esq.	
Nottingham, Town of	Edward Steegman, of Nottingham, Esq.	
Oxfordshire	Samuel Weare Gardiner, of Combe-lodge, Whitchurch, Esq.	
Poole, Town of	John Wills Martin, of Longfleet, Poole, Esq.	
Rutlandshire	John Thomas Springthorpe, of Manton, near Uppingham, Esq.	
Shropshire	Panton Corbett, of Longnor, Esq.	
Somersetshire	George William Blathwayt, of Porlock, Esq.	
Southampton, Town of,	Richard Andrews, of Southampton, Esq.	
Staffordshire	Charles Arkwright, of Dunstall-hall, near Burton-upon-Trent, Esq.	
Suffolk	Thomas James Ireland, of Owsden-hall, Newmarket, Esq.	
Surrey.	William Francis Gamul Farmer, of Nonsuch-park, Ewell, Esq.	
Sussex	Richard Shuttleworth Streatfield, of The Rocks, Uckfield, Esq.	
Warwickshire	Sir Theopilus Biddulph, of Birdingbury, Bart.	
Westmoreland	The Right Hon. the Earl of Thanet	
Wiltshire	Robert Parry Nisbett, of Southbroome-house, Devizes, Esq.	
Worcestershire	John Dent, of Walcot, Esq.	
Worcester, City of	Frederick Hall, of Worcester, Esq.	
Yorkshire	Octavius Vernon Harcourt, of Swinton-park, Masham, Yorkshire, Esq.	
York, City of	Richard Evers, of Coney-street, York, Esq.	

NORTH WALES.

Anglesey	Stephen Roose, of Tan-y-lan, Esq.	
Carnarvonshire	Samuel Owen Priestly, of Trefan, Esq.	
Denbighshire	Thomas Griffith, of Trevallyn-hall, Esq.	
Flintshire	Philip Lake Godsal, of Iscoyd-park, Esq.	
Merionethshire	Robert Davis Jones, of Trefri, near Machynlleth, Esq.	
Montgomeryshire	Robert Gardner, of Plas-y-Court, Esq.	

SOUTH WALES.

Breconshire	William Pearce, of Ffrwdgrech, Esq.	
Cardiganshire	Henry Hoghton, of Hafod, Esq.	
Carmarthen, Borough of	Thomas Taylor Webb, of Upper Market-street, Esq.	
Carmarthenshire	Walter Rice Howell Powell, of Maesgwynne, Esq.	
Glamorganshire	Robert Boteler, of Llandough-castle, Cowbridge, Esq.	
Haverfordwest, Town of	George James, of Haverfordwest, Esq.	
Pembrokeshire	Seymour Phillips Allen, of Cresselly, Esq.	
Radnorshire	Edward Middleton Evans, of Llwynbaried, Esq.	

STUDY OF THE LAW.

COURSE OF READING IN THE TIME OF LORD THURLOW.

It cannot fail to be interesting to those who are engaged in promoting improvements in Legal Education to peruse the opinions of Lord Thurlow, Lord Mansfield, Lord Camden, and Mr. Dunning, on the proper course of reading for the Law Students of their time. We are enabled to state their views from a manuscript amongst the papers of the late venerable Mr. Tidd. It is as as follows:—

"Substance of four several plans for the education and study of a lawyer, said to have been recommended by Mr. Dunning, Lord Thurlow, Lord Camden, and Lord Mansfield; and distinguished by their different initials.

General Education.

Grammar	D.T.
Latin and other Classical attainments	D.
Rhetoric	D.
Logic	D.
Geometry	D.
Geography	D.
History, particularly that of England	D.
Hume's History of England, particularly observing the rise, progress,	

Henry Lamb, of Kettering, Esq.	Messrs. Stables and Burn, 1, Copthall-court, Throgmorton-street.
Henry William Fenwick, of Newcastle-upon-Tyne, Esq.	Messrs. Pringle, Stevenson, and Co. 3, King's-road, Bedford-row.
John Mee, of East Retford, Esq. (A. U. John Brewster, of Nottingham, Esq.)	Messrs. Taylor & Collisson, 28, Great James-street, Bedford-row.
Christopher Swan, of Nottingham, Esq. ..	Messrs. Holme, Loftus and Young, 10, New-inn.
Samuel Cooper, of Henley-upon-Thames, Esq. ..	Charles Berkeley, 52, Lincoln's-inn-fields.
William Parr, of Fish-street, Poole, Esq. ..	Messrs. Homes, Loftus and Young, 10, New-inn.
William Gilson, of Uppingham, Esq.	Messrs. Capes and Stuart, 1, Field-court, Gray's-inn.
G. M. Salt, of Shrewsbury, Esq. (A. U. J. J. Peele, of Shrewsbury, Esq.)	H. B. Jones, 22, Austin Friars.
Frederick Dowding, of Bath, Esq.	E. J. Horton, 11, Furnival's-inn.
Edward Harrison, of Southampton, Esq. ..	Messrs. Trinder and Eyre, 1, John-st., Bedford-row
Messrs. Keen and Hand, of Stafford, Esq. ..	Messrs. White, Eyre and White, 11, Bedford-row.
James Sparke, of Bury St. Edmunds, Esq. ..	T. H. Dixon, 5, New Boswell-court, Lincoln's-inn.
Charles James Abbott, of 8, New-inn, Esq. ..	Messrs. Abbott, Jenkins and Abbott, 8, New-inn.
Francis Harding Gell, of Lewes, Esq.	Messrs. Palmer, France and Palmer, 24, Bedford-row.
John Welchman Whateley, of Birmingham, Esq. ..	Richard Raven, 2, King's Bench-walk, Temple.
John Heelis, of Appleby, Esq.	George Mounsey Gray, 9, Staple-inn.
Gabriel Goldney, of Chippenham, Esq.	William Lewis, 6, Raymond-buildings, Gray's-inn.
John Tymbs, (Messrs. Hydes and Tymbs,) of Worcester, Esq.	George Hall, 11, New Boswell-court.
William Samuel Price Hughes, of Worcester, Esq.	G. Becke, 21, Lincoln's-inn-fields.
William Gray, of York, Esq.	Messrs. Bell, Brodrick and Bell, Bow-church-yard.
Joseph Manby, of York, Esq.	J. W. Flower, 61, Bread-street, Cheapside.

NORTH WALES.

Robert Prichard, of Llwydiarth, Esgob, Esq. ..	Messrs. Capes and Stuart, 1, Field-court, Gray's-inn.
Thomas Ellis, of Pwlheli, Esq.	W. Jones, 7, Crosby-square, City.
Charles W. Wyatt, of Penyclink, Esq.	Messrs. Bloxam and Ellison, 1, Lincoln's-inn-fields.
Arthur Troughton Roberts, of Mold, Esq. ..	Messrs. Milne, Parry, Milne and Morris, 2, Harcourt-buildings, Temple.
George William Bonsall, of Machynlleth, Esq. ..	Messrs. Holme, Loftus and Young, 10, New-inn.
Alfred Meredith, of Welchpool, Esq.	Messrs. Gregory, Faulkner, Gregory and Skirrow, 1, Bedford Row.

SOUTH WALES.

David Thomas, of Brecon, Esq.	Henry Hammond, 16, Furnival's-inn.
F. R. Roberts, of Aberystwith, Esq.	Messrs. Hawkins and Co., 2, New Boswell-court.
George Thomas, jun., of Carmarthen, Esq. ..	Messrs. Rickards and Walker, 29, Lincoln's-inn-fields.
E. Randolph, Lympstone, Devon, Esq., (A. U. G. Thomas, jun., Carmarthen, Esq.)	John Trail, 4, Hare-court, Temple.
Thomas Evan, of Cardiff, Glamorganshire, Esq. ..	Messrs. J. Gregory and Son, 12, Clement's-inn.
Jonathan Rogers Powell, of Haverfordwest, Esq.	Messrs. Trinder, and Eyre, 1, John-st., Bedford-row.
A. L. Phillips, 18, Basinghall-street, London, Esq., (A. U. T. Gwynne, Haverfordwest, Esq.) ..	Messrs. Wathen and Phillips, 18, Basinghall-street.
Cecil Parsons, of Presteign, Esq.	Messrs. Rosser and Tamplin, 159, Fenchurch-street.

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and declension of the feudal system; minutely attending to the Saxon government that preceded it; and dwelling on the reigns of Edward 1st, Henry 6th, 7th, and 8th, James 1st, Charles 1st and 2nd, and James 2nd . . . D.

At the University.

First and second years.

Euclid, Rutherforth, and Locke, for a general sketch of the mathematics, natural philosophy, and logic . T.

Best classical authors, not forgetting English writers . . . . T.

Third year.

Close attention to chronology, geography, and history antient and modern, with Campbell's State of Europe, &c. . . . . T.

Fourth year.

French . . . . . T.

Cursory view of Justinian's Code and Digest and Civil Law . . . T.

Roman history, from Julius Cæsar . T.

Tacitus de moribus Germanorum, et de vita Agricolæ . . . . T.

Selden's Janus Anglorum . . . T.

Wotton's Leges Wallise . . . . T.

Wilkins's Leges Saxonicæ . . . T.

Norman Statutes, in Ruffhead, with Magna Charta, &c. . . . . T.

General Ethics.

Aristotle's Ethics . . . . . M.
Xenophon's Memorabilia . . . . M.
Tully's Offices . . . . . M.
Wollaston's Religion of Nature . . M.
Paley's Moral and Political Philosophy . . . . . D.

Law of Nations.

Grotius of War and Peace . . . M.
Puffendorff, with Barbeyrac's Notes . M.
Burlamaqui's Droit Natural . . . M.

Civil Law.

Gravina de Ortu et Progressis Juris Civilis . . . . . M.
Fernier's History of the Civil Law . T.
Justinian's Institutes, with the Commentary of Vinnius . . . . T. M.
Pandects . . . . . M.

Feudal Law.

Craig de Jure Feudalis . . . . M.
Corpus Juris Feudalis . . . . M.
Giannone's History of Naples, (one of the most instructive and ablest books that ever was written) . . . M.

General Writers on the English Law.

Lambard's Archaeonomia . . . . C.
Bracton . . . . . C. T.
Glanville . . . . . C.
Britton . . . . . C.
Fleta . . . . . C.
Mirrour . . . . . C.
Doctor and Student . . . . . T.
Coke on Littleton, especially the titles, fee simple, fee tail, and tenant in tail . . . . . D. T.
Hawkins' Compendium . . . . D.
Coke's Institutes . . . . D. C. M.
Bacon's Elements . . . . . D. C.
Finch's Law . . . . . C.
Hale's History of the Common Law . T. C.
Principles of Equity . . . . . D.
Wood's Institutes . . . . . C. M.
Blackstone's Commentaries . . . All.
Do. with the references . . . . T.

Writers on Real Property.

Littleton's Tenures, with Gilbert's and Wright's Tenures . . . . C. D.
Pigott on Recoveries . . . . . D.

Writs, Actions, Pleadings, and Evidence.

Registrum Brevium . . . . . T.
Fitzherbert's Natura Brevium . T. C. M.
Comyn's Digest, tit. Pleader . . . M.
Bacon's Abridgment, tit. Action, and Pleas and Pleading . . . . M.
Gilbert's Evidence . . . . . M.

Reporters.

Year Books . . . . . T.
Plowden's Commentary . . . D. C. M.
Coke's Reports . . . . . D. C. M.
Croke's Reports . . . . . D.
Hobart . . . . . C.
Vaughan . . . . . C.
Saunders . . . . . D.
Lord Raymond . . . . . D. M.
Strange . . . . . D.
Peere Williams . . . . . D.
Burrows . . . . . D. M.

Abridgments.

Brooke . . . . . T.
Bacon . . . . . D. M.

Crown Law.

Hawkins's Pleas of the Crown . . . M.

NOTES OF THE WEEK.

DINNER TO A JUDGE OF THE COUNTY COURT.

On the 19th Feb. the solicitors practising in the County Court of Warwickshire, at Birmingham, entertained Leigh Trafford, Esq., the learned presiding judge, to a sumptuous banquet, at the Queen's Hotel. T. E. Lee, Esq., presided on the occasion, and the vice-chair was filled by W. H. Gem, Esq. Amongst the legal gentlemen present were Mr. Councillor Harding, Mr. Councillor Hodgson, Mr. Councillor H. Hawkes, Mr. Councillor J. Smith, Messrs. John Guest, R. W. Gem, jun., Jessee Bartleet, W. Barlow, E. Sargent, J. Webb, J. Powell, J. H. Gem, W. Knight, T. Stanbridge, J. R. Bloxham, H. Ludlow, E. R. Rushworth, H. Lowe, Allen, and other solicitors and non-professional gentlemen, including W. C. Elkington, Esq., High Bailiff of the Court. The Town Clerk, Mr. Bray, Mr. George Edmonds, Clerk of the Peace, Mr. J. B. Hebbert, Mr. John Arnold, and some others, were prevented by unavoidable causes from being present.

After many loyal and constitutional toasts had been drunk and responded to, the health of the honourable and learned guest of the evening was given. The honourable gentleman, in the course of an interesting address, alluded very feelingly to the kind spirit with which he had been received by the profession generally, in his new office,—a spirit so cordial and uniform, that really it was the only thing relating to his office for which he was not prepared. Such *reunions* as these could not fail to be productive of benefit, not only to the parties immediately concerned, but also to the public, by showing the sense in which the performance of his duties was appreciated, by conducing to a good understanding among the different members of the profession, and creating a sincere desire to render our County Courts as beneficial and comprehensive in their operations as they are capable of being made. The learned judge retired early in the evening.

It is suggested to the very respectable gentlemen who promoted and attended this meeting, to consider, whether the precedent they have set may not be inconvenient and objectionable. Respect for "*courtesy* and *impartiality*" may be shown in other modes than public dinners. Are we to understand that these judicial qualities in the County Courts are rare, and therefore require encouragement? We hope not. We make this comment without the slightest intention to doubt that if the practice

could ever be justifiable, it would be so in the instance before us; and that the learned judge who was present, with the legal advisers and advocates of the suitors in his Court, conducted the meeting with good taste and feeling. However, there is this precedent to be appealed to: the Bar dine with the Judges on Circuit, and it may be asked, why should not the advocates of the County Court "come into commons" with the worthy judge?

NUMBER OF LAWYERS IN LONDON.

In attributing so much dyspepsia to life in London, we must not infer from it that the cockneys are a quarrelsome race, because of the number of gentlemen through whose agency disputes are settled. The truth is, that the majority of the disputes of the whole empire are disposed of here. This fully accounts for the 9,191 attorneys, the 1,000 barristers (alarm at these numbers sensibly subsides when it is remembered that all the former are not in full practice, and some ninety per cent. of the latter are briefless,) the 127 special pleaders and conveyancers not at the bar, the 112 proctors, the 39 notaries, and the 54 Irish, Scotch, Channel Island, and parliamentary agents who are not attorneys.—*Notice of the Post-office Directory in the Daily News.*

RECENT DECISIONS IN THE SUPERIOR COURTS,

AND SHORT NOTES OF CASES.

Privy Council.

In re Hardy, Feb. 12, 1849.

EXTENSION OF TERM OF PATENT.

Circumstances in which the duration of a patent will be extended, subject to certain terms.

THIS was an application for the extension of a patent for a period of seven years, by the patentee, Mr. Hardy, and Messrs. Geach and Walker, to whom he had assigned the patent. The patent had been granted in 1835, and, according to the specification, was for improvements in making axle-trees,—1st, by so shaping bars of iron, while in a heated state, by means of rolling, that when they were put together they formed a cylindrical figure; 2ndly, by combining a series of such bars as segments of the cylinder, and, after heating them, by passing them between rollers, by which perfect cohesion of the metal was effected; 3rdly, by working them between cylindrical dies, under a tilt-hammer, and giving them the required form, and at the same time hardening the iron. There had been, it appeared, a loss of 3,000*l.* from 1835 to 1838, and a further loss of 2,780*l.* from 1838 to 1844, but in 1845, 4,411*l.* was realised, and in 1846, 8,861*l.*, and 12,629*l.* in 1847, and 2,585*l.* on the half-year of 1848. Considerable loss, however, was proved would ensue if the plant were immediately sold off.

Hill in support of the application.

The *Court* said, that an extension of four years was all to which the assignees were entitled. They were not to increase the present price of the manufacture higher than would be justified by an increase in the price of the raw material, and they must give one-half of the net profits to the patentee.

March 5.—*Craig* v. *Parnell*—*Cur. ad. vult.*

Lord Chancellor.

Sharp v. *Taylor*, Feb. 10, 1849.

SHARES IN A SHIP.

On an alleged fraudulent sale of an American ship which had been stranded at Liverpool and taken to Charleston, an account was directed to be taken.

THIS bill was filed to establish the plaintiff's right to a share in the ship Victoria of Charleston, and to set aside the alleged fraudulent sale thereof by the defendant, who was jointly interested in the vessel, or for an account of the proceeds of sale. The plaintiff and defendant had purchased the ship when she stranded at Liverpool; but as she was American built, and they could not procure her registration as British, they sent her to Charleston with a cargo, with instructions to their agent for her sale. She was accordingly sold, the defendant alleged, as their agent's property. The plaintiff charged collusion between the defendant and the agent to defraud him of his share of the ship and cargo. An account had been decreed by the Vice-Chancellor Wigram, from which decision the defendant appealed.

The *Lord Chancellor*, after stating the circumstances of the joint purchase by the plaintiff and defendant, said that further information was necessary to enable him to adjudicate on the whole question, and all the facts must be ascertained. His lordship then gave special directions, with a view of obtaining the information required, which the plaintiff might, at his discretion, accept or not; and affirmed the decree of the Court below.

March 2.—*In re Yaldon*—Petition granted for commission of lunacy.

—— 3.—*In re Dyce Sombre*.—Part heard.

—— 7.—*Hickman* v. *Hickman*.—Leave given to present a petition.

Rolls Court.

***Williamson* v. *Gordon and others*.** Feb. 27, 28, 1849.

PARTNERS.—BOND.—MORTGAGE.

The prayer of a bill filed by one partner to cancel a bond in security of a partnership debt refused, under the circumstances, with leave, however, upon paying the sum remaining due on the bond, to hold the mortgage given in security of such payment, and decree for an account of the sum due on the bond.

THIS bill was filed by the plaintiff, John Williamson, against William Gordon, Robert Castle, William Jones, James Cazenove, and John Kearsley, and prayed that the defendants might be restrained by injunction from further proceeding in an action at law against the plaintiff, and from instituting any other action respecting the matters in question. It appeared that the plaintiff, in 1807, entered into partnership with William Cross, a rectifying distiller in Chester, and had various transactions with the firms of Michael Castle & Co., and Messrs. Castle & Co. of Bristol. The plaintiff and Cross, in 1814, were indebted to Messrs. Castle & Co., to the amount of 6,000*l.*; and, to secure the payment of the same and interest, they executed a joint and several bond in 12,000*l.*, conditioned for the payment of the said debt and interest to Michael Hinton Castle, John Ames, Michael Castle, Thomas Castle, and Robert Edge Castle—the several parties constituting the firms. The plaintiff's father had, in consideration of 500*l.*, conveyed the distillery at Chester to the plaintiff and Cross as tenants in common, but the conveyance and title-deeds only came into the possession of the plaintiff on the death of his father in 1813. The plaintiff and Cross dissolved partnership in 1817, and Cross continued the business and had extensive dealings with the obligees and the persons who from time to time constituted the Bristol firms. These firms had, upon the deaths of Robert Edge Castle and Michael Castle, in 1822, and the retirement of John Ames in the same year, who afterwards died in 1824, and the death of Thomas Castle in 1827, continued their business under different names. In 1829, Michael Hinton Castle and others constituted the firm. The plaintiff had agreed to pay five instalments of 500*l.* each, in part payment of the bond debt, and Cross was also to make such payments as to reduce the amount to 2,500*l.*, which was to remain upon the security of the bond. Cross also agreed to purchase 475*l.*, one moiety of the business premises, and to take upon himself the whole bond debt on the payment by plaintiff of the five several sums of 500*l.* These arrangements were communicated to the surviving obligees and persons interested in the bond. The plaintiff accordingly paid in each of the years, 1823, 1824, 1825, 1826, 1828, the sum of 500*l.* The firms, after the last payment of 1828, made no application to the plaintiff in respect of the said bond, but charged Cross with the principal and interest remaining due, giving credit for payments made on account thereof.

The bill prayed that the bond for 6,000*l.* might be cancelled, so far as it concerned the plaintiff, or that the plaintiff might be released from all liability thereon. It also prayed for an account of the dealings between the several firms and Cross, and that the debt due on the bond might be ascertained, and that the plaintiff might have the benefit of the conveyance and title-deeds of the brewery, held by him against Cross, on the amount due on the bond, and that they might be sold. It further prayed, that the deeds and documents might be returned to the plaintiff for the purpose of the sale, and the produce applied in discharge of the bond debt. And, lastly, that William Gordon might indemnify the plaintiff from loss by reason of the plaintiff remaining a party to the bond, and that directions might be given, inquiries made, and accounts taken for those purposes.

Purvis and *Bates* for the plaintiff; *Turner*, *Osborne*, *Willcocks*, and *Roupell*, for the defendants.

The *Master of the Rolls* said, the bill must be dismissed as to the first alternative, but that the plaintiff was entitled under the second to the benefit of the mortgage on paying what was due on the bond. An account would, therefore, be taken of the amount remaining due upon the bond.

March 1.—*Fox* v. *Roberts and others*—Issue directed to the Court of Common Pleas to ascertain whether the child in question was born alive.

— 2.—*Salmon* v. *Green*—*Cur. ad. vult.*

— 2.—*Vallance* v. *Amiot and others*—Stand over.

— 3.—*Woolard* v. *Hill*—Decree by consent—the parties to be paid their costs.

— 3, 5.—*Lockhart* v. *Alder*, *Lockhart* v. *Crouch*—Part of the exceptions allowed to the Master's report.

— 6.—*Padwick* v. *Platt*—Stand over.

— 6.—*Walker* v. *Milne*—Stand over.

— 6.—*Tyre* v. *Corporation of Gloucester*—Reference to the Master to inquire as to the proceedings to be adopted for the recovery of debts in Ireland.

— 1, 7.—*Hele* v. *Lord Bexley and others*—Stand over, to consider the form of action to be brought to try the validity of the annuity, and to settle the terms of the issue.

— 7.—*Attorney-General* v. *Fuller*—Scheme for charity settled by consent.

Vice-Chancellor of England.

***In re Sowerby's Charity*.** Jan. 26, 1849.

SALE OF CHARITY PROPERTY.

Order for sale of charity property without a reference, where the income is very small and a willing purchaser offers himself—the property requiring a large outlay in repairs.

THIS was a petition for the sale of four

houses constituting part of certain charity property, (the total income of which was 42*l*). They produced about 8*l*. per annum, but were so dilapidated that the parties interested therein thought it inexpedient to make the outlay required.

Dickenson for the petitioners, said, that one of the feoffees had agreed to purchase at such a price as would produce the 8*l*. per annum.

The *Vice-Chancellor* said, that the Court would not compel a purchaser to take the houses, but as there was a willing purchaser, and the income of the charity was very small, the order would be made without a reference.

Sharpe v. *Arbuthnot*. Feb. 10, 1849.

POSTPONEMENT OF HEARING.—COUNSEL.

The Court refused, without the consent of the opposite counsel, to postpone the hearing of the conclusion of the argument on account of attendance of counsel at the House of Lords.

THIS was an application for an injunction to restrain an action at law upon certain bills of exchange.

Bethell and *Follett* for the plaintiff. At the rising of the Court, Mr. *Bethell* had not concluded his argument, and requested that he might have an opportunity of continuing on another day than Monday, as he had to attend in a case at the House of Lords.

Stuart, for the defendant, having objected to the postponement,

The *Vice-Chancellor* said, that he had always felt it a most serious evil to have the hearing of causes stopped by the intervention of other business. He had often been obliged to hear several parts of different cases, and it was most inconvenient to have his attention thus taken from one part heard case to another. He had always, however, wished to accommodate counsel by postponing an argument, if the opposing counsel consented. But as Mr. Stuart would not consent to the postponement, the Court could not postpone the matter, the motion would, therefore, stand at the head of the next day's paper.

March 1.—*Borton* v. *Borton*—Bill dismissed with costs.

— 1.—*Haynes* v. *Barton*—Plea of the defendant overruled.

— 2.—*In re Bloye's Trust*—Parties purchasing *bond fide* at a public auction a reversionary interest, held entitled thereto.

— 3.—*Grisewood* v. *Justice*—Petition for specific performance of contract for the purchase of railway shares, granted.

— 4.—*Mackenzie* v. *Downs*—Prisoner, arrested under protection, ordered to be discharged.

— 5.—*Hutton* v. *Haley*—Issue on a question of forgery—Reference to the Master to settle the terms, if the parties differed.

— 6.—*Cornwell* v. *Brand*—Trustee's costs to be paid out of the fund in Court, to be taxed as between solicitor and client.

March 5.—*Attorney-General* v. *Montagu*—Judgment on construction of will.

— 6.—*Dobson* v. *Fewell*—Bill dismissed with costs.

Vice-Chancellor Knight Bruce.

Ex parte Armstrong, In re the North of England Joint-Stock Banking Company. Jan. 17, 1849.

JOINT-STOCK COMPANIES' WINDING-UP ACT.—CONTRIBUTORY.

Held, *that an executor of a deceased party was, under the circumstances, wrongly inserted in the list of contributories under the* 11 & 12 *Vict. c.* 45, *s.* 3.

THE Master had inserted the name of the petitioner in the list of contributories of the company, under the 11 & 12 Vict. c. 45, (the Joint-Stock Companies' Winding-up Act). The petitioner, it appeared, was the executor of a Mr. Hedley, and had received the dividends on the shares. As he had not, however, procured himself to be registered the owner of the shares, pursuant to the deed of settlement, it was contended he only acted as executor, and signed the receipts as such.

Russell and *Pigott* moved that the decision of the Master might be reversed, and the petitioner's name expunged from the list of contributories.

Bacon, Lloyd, and Headlam, contrà.

The *Vice-Chancellor* said, that having regard to the whole course of proceedings and the receipts given by the petitioner, he could not hold that he was a contributory within the meaning of the third section of the 11 & 12 Vict. c. 45. The report of the Master must, therefore, be sent back for review.

March 1.—*Gregson* v. *East Anglian Railway Company*—Injunction granted on terms, otherwise refused.

— 2.—*Baily* v. *Harrison*—Injunction granted, restraining the printing of plaintiff's design on pocket handkerchiefs.

— 2, 3.—*Andrew* v. *Andrew*—Part heard.

— 5.—*Ex parte Carruthers, in re Higginson*—Petition to stand over and to be dismissed, if the suit to establish the ownership were not commenced within six weeks.

— 7.—*Ex parte Bates, in re Bates*—Decision of Commissioner confirmed.

— 7.—*Ex parte Green, and Ex parte Clarke, in re Tring, Reading, and Basingstoke Railway Co.*—Proof of debt admitted at 4 per cent. interest.

— 7.—*Ex parte Penny, in re Williams*—Lien against bank who had priority held waived, without prejudice to filing a bill.

Vice-Chancellor Wigram.

Middleton v. *Reay*. Feb. 18, 1849.

APPOINTMENT OF TRUSTEES.

Exceptions to Master's report overruled, where the trustees appointed were not objected to

as unfit—and where the right of the survivor had not been insisted on by answer before the order of reference.

THE testator by his will vested his residuary estate in three trustees, of whom his wife was one, upon certain trusts, with power, in case of death or retirement from the trusts of any of the trustees, to the survivor or survivors to appoint others in their stead. It appeared that the estate had become vested in the testator's widow and a Mr. Hodgson, but who at the hearing of the cause had disclaimed the trusts. A bill had been filed, objecting to the appointment of Mr. Hodgson, and praying the appointment of two trustees. The Court had recognised the validity of the appointment, and directed a reference to the Master to approve of trustees to act under the will. The Master appointed two trustees, without regarding the claim of the widow to propose the trustees.

Kenyon Parker, and *Shebbeare*, in support of the exceptions, cited *Cafe* v. *Bent*, 3 Hare, 245.

The *Solicitor-General*, contrà, cited ——— v. *Roberts*, 1 Jac. & Walk. 251; *Attorney-General* v. *Dysm*, 2 Sim. & Stu. 528.

The *Vice-Chancellor* said, that up to the filing of the bill the widow had a right to exercise her power under the will, and she might have claimed the right by her answer, which right the Court might have allowed or not. The Master had a discretion in regarding it not as a right but merely as a circumstance in the case. The trustees appointed were not objected to as unfit for the office; the exceptions, therefore, must be overruled.

March 1, 3.—*M'Gregor* v. *Bainbridge*—Application for new trial granted on the ground of surprise.

— 1, 2.—*Lucas* v. *James*—*Cur. ad. vult.*

— 2.—*Culsha* v. *Cheese*—*Cur. ad. vult.*

— 3.—*De Visme* v. *De Visme* — *Cur. ad vult.*

— 3, 6.—*Davenport* v. *Davenport* — Demurrer for want of equity allowed with costs.

— 5, 6.—*Bagshawe* v. *Eastern Counties Railway Company and Alexander and others, directors*—*Cur. ad. vult.*

— 7.—*Price* v. *Berrington*—Decree for account.

— 7.—*Lawrence* v. *West Middlesex Waterworks Company*. — Company held entitled to costs—Unsuccessful parties to pay costs.

Queen's Bench.

(Before the Four Judges.)

The Queen v. *Charretie*. Feb. 24, 1849.

SALE OF NOMINATION TO A CADETSHIP A MISDEMEANOR, UNDER 49 GEO. 3, C. 126.

Held, that a cadetship in the East India Company's service was an "office, commission, place, or appointment" within the meaning of the 49 G. 3, c. 126; and that the sale thereof was, therefore, a misdemeanor.

THE defendant was indicted, with others, under the 49 Geo. 3, c. 126, for receiving money for the nomination to a cadetship in the East India Company's service, and convicted. A rule *nisi* for a new trial was obtained, upon the ground, that a nomination to a cadetship, containing a proviso or condition that the party nominated should be found and declared by the directors fit for the appointment, was not an "office, commission, place, or appointment," within the meaning of the statute.

The *Court* (after taking time to consider) gave judgment for the Crown. The clear intention of the legislature was to prevent all corrupt bargains for situations in the East India Company's service, and the nomination to a cadetship would be sufficiently described by any of the words mentioned in the act. At all events, it was clearly an "appointment" in the gift of the directors of the Company, the sale of which was made a misdemeanor by the act. The offence being fully proved, the Court thought the conviction right, and discharged the rule for a new trial.

Queen's Bench Practice Court.

Ellis v. *Peachey*. Feb. 24, 1849.

JURISDICTION OF COUNTY COURT. — POSSESSION OF TENEMENTS.

A judge of a County Court has no jurisdiction to direct possession to be given of premises, ultra the local limits of the Court, under the 9 & 10 Vict. c. 95, s. 122.

A prohibition lies to restrain a judge of a County Court from proceeding on a plaint to recover possession of lands lying within the district of another County Court.

A PLAINT was entered in the County Court of Hereford, under the 9 & 10 Vict. c. 95, s. 122, to recover possession of tenements situated in the county of Essex. The defendant resided within the jurisdiction of the County Court of Hereford.

A rule *nisi* for a prohibition was obtained, on the ground, that the County Court of Hereford had no jurisdiction over lands or tenements situate in the county of Essex; and that a warrant of possession issued by the judge of the Hereford Court could not be executed in the county of Essex. In opposition to the rule it was contended, that a warrant of possession, issued by the judge of the County Court in which the defendant resides, may be executed by the bailiff of the Court within the jurisdiction of which the tenement is situate.

The case was argued in Hilary Term, before *Erle*, J., by *Naylor* for the plaintiff, and *Lush* for the defendant.

Erle, J. took time to consider, and his judgment was afterwards delivered by

Wightman, J. A warrant issued by the

judge of the County Court at Hereford to give possession of premises in Essex would be invalid, and could not be wholly executed by the bailiff of the County Court of Essex. It was otherwise, as to warrants of execution against goods and chattels, or an order for commitment, which, it was expressly provided by the 104th section, might be executed out of the jurisdiction of the Court, by the officer of another Court. There was no power, however, to issue warrants to be executed out of the jurisdiction, giving possession of tenements under the 122nd section. The plaint entered in the County Court of Hereford, therefore, could not be properly proceeded in, and the rule for a prohibition must be absolute.

Rule absolute accordingly.

Common Pleas.

Bines v. Arnold. Jan. 31, 1849.

NEW TRIAL.—MISDIRECTION.

Rule nisi granted for a new trial, on the ground of misdirection, where the judge directed the jury that the entering a plaint in a County Court was an abandonment of another debt for the same cause of action, and where the defendant had not proved in the County Court an excess over 20l.

THIS action was tried before *Coltman*, J., and was brought to recover 21*l.* 10*s.*, for goods sold and delivered. The defendant pleaded, that a plaint had been entered in the County Court for 17*l.* 10*s.*, which, together with the debt declared on, formed one cause of action. No actual abandonment of the 21*l.* 10*s.* was proved, but the judge directed the jury that the entering the plaint for 17*l.* 10*s.*, was tantamount to an abandonment of the other debt. The jury, thereupon found a verdict for the defendant. The plaintiff now applied for a rule, calling on the defendant to show cause why a new trial should not be had on the ground of misdirection.

Hawkins in support of the rule.

The *Court* said, that if the defendant had proved an excess over 20*l.*, the jurisdiction of the County Court would have been ousted under the 58th section of the 9 & 10 Vict. c. 95, but the defendant had not done so. The rule *nisi* must, therefore, be granted.

Mayhew and others, assignees, v. Herrick. Feb. 8, 1849.

WRONGFUL CONVERSION.—PARTNERS.—BANKRUPT.

Held, that a sale of property by one joint-tenant or tenant in common, was a conversion against the other, and that a wrongful conversion might be proved under a plea of not guilty. Stancliffe v. Hardwick, 2 C. M. & R. 1, overruled.

THIS was an action of trover tried before Lord *Denman*, C. J., at the Spring Assizes for Surrey, and a verdict was found for the plaintiffs for 15*l.*, with leave reserved for the plaintiffs to move to enter a verdict for 75*l.*, and for the defendant to have the verdict set aside, and entered for him. The plaintiffs, it appeared, were the assignees of a bankrupt who was in partnership with one Smee, a brewer at Bow Common. The defendant was an officer of the Palace Court, and had, upon an execution against Smee, entered the brewery, and seized and sold malt and hops, which were partnership property, and also some barrels, the property of the bankrupt alone. The malt and hops were valued at 150*l.*, and the value of the barrels at 15*l.*

Cross rules *nisi* had been obtained last Easter Term.

Bramwell and *Willes* for the plaintiffs; *Lush* for the defendant.

The *Court* directed the verdict entered for 15*l.* on the count laying the property of the barrels in the bankrupt to be affirmed, and also a verdict for 75*l.* on the count laying the property in the malt and hops in the plaintiffs, as assignees, jointly with Smee, to be entered. Although the defendant had pleaded "not guilty," and notwithstanding the case of *Stancliffe v. Hardwick*, 2 C. M. & R. 1, the wrongful conversion could be given in evidence under the decisions in *Whitmore v. Greene*, 13 M. & W. 104, and *Kynaston v. Crouch*, 14 M. & W. 266. The defendant, after seizure, was in the position of a joint tenant or tenant in common with the bankrupt, and it would be going too far to hold, that a sale under these circumstances by one, was not a conversion as against the other, joint tenant or tenant in common. The Court is not called on to decide whether in every such case a sale would amount to a wrongful conversion. Here, however, nothing had occurred to deprive the owner of the property from complaining of the conversion, and for maintaining trover for the same. As to the amount of damages on the second count, the Court, in the absence of any contrary proof, could not resort to any measure of damages, except the moiety of the partnership goods converted. The verdict for 15*l.* on the first count the plaintiff was clearly entitled to retain. The plaintiffs' rule must, therefore, be made absolute on the second count, and the defendant's rule be discharged.

Exchequer.

Cooper v. The Norfolk Railway Company. Feb. 14, 1849.

COPYHOLD LANDS.—STEWARD'S FEES.—CONSTRUCTION OF 8 & 9 VICT. C. 18, S. 95.

Upon the surrender of copyhold land to the uses of a railway company, the steward of the manor is entitled, under the provisions of the 8 & 9 Vict. c. 18, s. 95, to a fee upon surrender only, and not to a separate fee upon surrender and admittance.

DEBT, by the steward of the manor of East Dereham, Norfolk, to recover two fees of 10*l.*

as unfit—and where the right of the survivor had not been insisted on by answer before the order of reference.

THE testator by his will vested his residuary estate in three trustees, of whom his wife was one, upon certain trusts, with power, in case of death or retirement from the trusts of any of the trustees, to the survivor or survivors to appoint others in their stead. It appeared that the estate had become vested in the testator's widow and a Mr. Hodgson, but who at the hearing of the cause had disclaimed the trusts. A bill had been filed, objecting to the appointment of Mr. Hodgson, and praying the appointment of two trustees. The Court had recognised the validity of the appointment, and directed a reference to the Master to approve of trustees to act under the will. The Master appointed two trustees, without regarding the claim of the widow to propose the trustees.

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March 1, 3.—*M'Gre*[illegible] plication for new trial [illegible] surprise.

— 1, 2.—*Lucas* [illegible] an-

— 2.—*Culsha* [illegible] tled to

— 3.—*De W*[illegible] only, and [illegible] as entitled to a [illegible] ment must be enter- [illegible] gly.

meaning of the 49 G. 3, c. 126 [illegible] the sale thereof was, therefore [illegible] meanor.

THE defendant was indic[illegible] under the 49 Geo. 3, c. 126, [illegible] for the nomination to a [illegible] India Company's servi[illegible] rule *nisi* for a new tri[illegible] ground, that a nomi[illegible] taining a proviso [illegible] nominated shou[illegible] the directors fit [illegible] an "office, co[illegible] within the m[illegible]

The *Cou*[illegible] gave jud[illegible] tention [illegible] corrup[illegible] Indi[illegible] to a [illegible] by [illegible]

[illegible] If it [illegible] article sold was [illegible] oker, and it turned [illegible] perty, an action would lie [illegible] ion; but although by the law [illegible] otland, and many parts of America, [illegible] plied that a party selling goods war- [illegible] ed that he had a good title to convey the thing sold to the purchaser, no such principle was deducible from the common law of England, as expounded by the ancient authorities. There the pawnbroker sold the right to the pledge which he himself had, and warranted nothing beyond that. Upon this ground the verdict entered for the plaintiff was ordered to be set aside, and a nonsuit entered.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRINCIPLES OF EQUITY.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75.
Law of Costs, p. 35.
Law of Evidence, p. 56.
Law of Attorneys, p. 341.

Courts of Equity:

Law of Property and Conveyancing, p. 113.
Principles of Equity, p. 134.
Practice, p. 196.
Pleadings, p. 361.
Bankruptcy, p. 158.]

ACCOUNT.

Setting aside account.—Surcharge and falsify.—A person died intestate. His brother took out administration, and placed himself in *loco parentis* to the intestate's children. One of them attained 21 in September, 1823, and in May, 1825, came to a settlement of account with the administrator, which he signed and confirmed, and in January, 1828, he received

affect parties advancing money to the buyer on the faith of representations made to them by brokers, that the contract was regular and valid, nor deprive such parties of their right of rescinding the transaction and recovering payments which had been made. *Wilson* v. *Short*, 6 Hare, 366.

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BUILDER'S CONTRACT.

Fraud.—Want of writing.—A builder agreed, by a written contract under seal, with a board of guardians, to build a workhouse according to a certain plan, for a certain sum; and any deviations from the plan, which the board or their architect might order in the course of the work, were to be valued in a particular manner, and the value added to or deducted from the stipulated price, as the case might be; but it was expressly provided that no allowance was be made to the builder for additional work, ss the same should be ordered in writing. he builder had been paid for all the work ursuant to the written agreement, he ill against the board, alleging that ional work had been done with the d sanction of the board, and on an assurance from their agent that ten order for it was necessary, and ying an account and payment of what was due in respect of such work. On a general demurrer to the bill, *held*, 1st, that the subject-matter of the claim was not of itself within the jurisdiction of this Court; and 2ndly, that the alleged fraud on the part of the board, in taking advantage of the want of a written order to avoid paying for work which they had sanctioned, would not give the Court jurisdiction, and that bills to enforce parol contracts within the Statute of Frauds, on the ground of part performance, were different, the Court having jurisdiction in those cases over the original subject-matter, viz., the contract, and the question being whether that jurisdiction was ousted by the want of a writing, whereas here the attempt was to make the want of a writing the ground of jurisdiction. *Kirk* v. *Guardians of Bromley Union*, 2 Phill. 640.

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CHAMPERTY.

Though the Court will not enforce a contract for the purchase of a litigated right, yet if a lawful contract for the purchase of an undisputed right be made, and the necessity for litigation as against third persons arise out of circumstances afterwards discovered, the purchaser or assignee is not precluded from suing upon his contract. It is not champerty where the right purchased was originally clear, and the litigation was the result of circumstances subsequently arising or subsequently known. *Wilson* v. *Short*, 6 Hare, 366.

CHARITY.

Visitor.—Upon an information for the reformation of alleged abuses in the management

cash, from the Norfolk Railway Company, upon surrender of certain lands and premises within the manor, by a copyholder, to the uses of the defendants, and their admittance thereto. The question, submitted to the Court upon a special case, was, whether upon the true construction of the 95th section of the Lands' Clauses Consolidation Act, (8 & 9 Vict. c. 18,) the steward of a manor was entitled to but one fee for surrender and admittance, or to distinct fees for each. The section in question enacts, that "every conveyance to the promoters of the undertaking, of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof, he shall make such enrolment."

Mr. *Hugh Hill* argued the case on behalf of the plaintiff; and Mr. *Unthank* for the company.

The judgment of the Court was delivered by *Parke*, B., who stated the question to be, whether the Court was to construe the 95th section of the 8 Vict. according to the plain literal sense of its language or not. It was contended for the plaintiff, that the section should be construed as if the words were "by reason of or in consequence of any surrender," and not "on the surrender," and that it would be unjust to deprive the stewards of their fees. But it was not clear that any injustice would accrue by adhering to the obvious sense of the words used, for the number of these conveyances was doubtless taken into consideration when the fees were fixed at half their ordinary amount; besides which, if the act had not passed, perhaps, there would have been no fee paid. These reasons prevented the Court from departing from the ordinary rule of construction. According to the plain and ordinary sense of the language employed, the steward was entitled to the fee payable upon the surrender only, and therefore the present plaintiff was entitled to a fee of 10*l*., for which judgment must be entered. Judgment accordingly.

Manley v. *Attenborough*. - Feb. 16, 1849.

SALE OF UNREDEEMED PLEDGES.—WARRANTY BY PAWNBROKER.

A pawnbroker who sells an unredeemed pledge does not warrant the title to the article sold, but merely sells his own interest in the article, undertaking that it is a pledge, the time allowed by law for the redemption of which had elapsed.

A HARP had been let out to hire by a music-seller, and the baillee illegally pawned it with the defendant. After the expiration of a year the harp was sold by public auction, on account of the defendant, as an unredeemed pledge, and purchased by the plaintiff. The bailor subsequently claimed the article as his property, and the plaintiff being advised that his claim could not be resisted at law, delivered over the harp, and brought the present action against the pawnbroker, declaring upon an alleged breach of an implied warranty, to sell an article which the defendant had a title to sell and convey. At the trial a verdict was taken for the plaintiff, subject to an application to enter a nonsuit. A rule was granted accordingly and fully argued in Easter Term, 1848.

After taking time to consider the question, the Court *held*, that a pawnbroker selling an unredeemed pledge without more, undertook nothing more than that it was an unredeemed pledge, and that the time allowed by law to the pawnor to redeem it had expired. If it was alleged at the sale, that the article sold was the property of the pawnbroker, and it turned out not to be his property, an action would lie for misrepresentation; but although by the law of France, Scotland, and many parts of America, it was implied that a party selling goods warranted that he had a good title to convey the thing sold to the purchaser, no such principle was deducible from the common law of England, as expounded by the ancient authorities. There the pawnbroker sold the right to the pledge which he himself had, and warranted nothing beyond that. Upon this ground the verdict entered for the plaintiff was ordered to be set aside, and a nonsuit entered.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRINCIPLES OF EQUITY.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75.
Law of Costs, p. 35.
Law of Evidence, p. 56.
Law of Attorneys, p. 341.
Courts of Equity:
Law of Property and Conveyancing, p. 113.
Principles of Equity, p. 134.
Practice, p. 196.
Pleadings, p. 361.
Bankruptcy, p. 158.]

ACCOUNT.

Setting aside account. — Surcharge and falsify.—A person died intestate. His brother took out administration, and placed himself in *loco parentis* to the intestate's children. One of them attained 21 in September, 1823, and in May, 1825, came to a settlement of account with the administrator, which he signed and confirmed, and in January, 1828, he received

his share of the estate. In September, 1848, he filed a bill to open the account. Many errors were shown to exist in the account, some of the items of which appeared to be fictitious, and although 40 years had elapsed since the death of the intestate, 20 years since the plaintiff attained 21, 17 years since the settlement of the account, and more than two since the discovery of the errors, yet the Court, having regard to the nature and extent of the errors, the relation between the parties, and the influence of the administrator over the plaintiff, refused to limit the relief to a right to surcharge and falsify the account, but set it aside altogether, and directed the accounts to be taken, with special inquiries. *Allfrey* v. *Allfrey*, 10 Beav. 353.

ADMINISTRATION SUIT.

Specific fund.—Appropriation.—Residuary estate.—The circumstance that a fund, in which a party takes a life interest under a will, is transferred by the executor to the trustees of that fund appointed by the will, is not necessarily and conclusively a severance of the fund from the bulk of the estate, unless the executor has, by such transfer, done all that it is incumbent upon him to do in the administration of the fund. *Pennington* v. *Buckley*, 6 Hare, 451.

BROKERS.

Principal and agent.—Mortgagor and mortgagee.—Brokers, in the city of London, being directed to purchase iron, delivered to the buyer bought notes, purporting to be notes of the contract for the iron, not disclosing the name of the seller, the brokers guaranteeing the performance of the contract; and the buyer paid the brokers their commission, together with a deposit in part payment of the price of the iron. The buyer afterwards discovered that there was no principal seller of the iron, other than one of the firm of brokers, who intended himself to perform the contract; and upon a bill filed by parties from whom the buyer of the iron had obtained money on the security of the contract, the deposits were ordered to be repaid with interest.

If in such a case the plaintiffs had, before the bill was filed, abandoned all interest in the contracts for the iron, they could not afterwards sue for the recovery of the deposits; but the cancellation of certain letters, which gave the plaintiffs an interest in the contract as against the brokers,—the plaintiffs being at the time of such cancellation ignorant, and the brokers knowing the truth of the case,—does not in equity protect the brokers from the claim of the plaintiffs for the recovery of the deposits.

If the plaintiffs had known that the brokers were also the sellers of the iron, or if the plaintiffs were otherwise not deceived by their representations, they would not have been entitled to relief in equity. Knowledge by the buyer of the fact that there was not any seller of the iron other than the brokers, would not affect parties advancing money to the buyer on the faith of representations made to them by brokers, that the contract was regular and valid, nor deprive such parties of their right of rescinding the transaction and recovering payments which had been made. *Wilson* v. *Short*, 6 Hare, 366.

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CHARITY.

Visitor.—Upon an information for the reformation of alleged abuses in the management

of a school established by the founder of Magdalen College, in connection with it, *held*, that the Court had not jurisdiction to give the relief asked. That though there was sufficient proof of the duty or obligation, there was no evidence of a trust, as the word is understood in this Court, and that the proper remedy was through the visitor. *Attorney-General* v. *Magdalen College, Oxford*, 10 Beav. 402.

DISCHARGE FROM ARREST.

Condition not to bring action.—Cases in which the Court, upon ordering the discharge of a party from his arrest, will impose upon him the condition that he shall bring no action in respect of the arrest. *Newton* v. *Askew*, 6 Hare, 324.

FICTITIOUS CONTRACT.

Misrepresentation.—Jurisdiction.—There is a remedy in equity as well as at law, by a principal against his broker or agent, to recover a sum of money paid to the broker on his untrue representation, that he had entered into a contract for his principal, which alleged contract had in fact no existence. *Wilson* v. *Short*, 6 Hare, 366.

FRAUD.

Trade marks.—Injunction.—The plaintiff invented and sold a medicine under his own name. The defendant also made and sold a similar medicine, and on his labels he used the plaintiff's name and certain certificates given of the efficacy of the plaintiff's medicine, in such an ingenious manner, as *prima facie*, though not in fact, to appropriate and apply them to his own medicine: *Held*, that although there were other differences in the mode of selling, the proceeding was wrongful, and the defendant was restrained by injunction. *Franks* v. *Weaver*, 10 Beav. 297.

See *Builder's Contract*; *Fictitious Contract*.

GRAMMAR SCHOOL.

Eligibility of Boarders for exhibitions.—Where exhibitions are provided out of the surplus fund of a grammar school, none but boys who are objects of the charity ought to be eligible to them. Observations on *The Attorney-General* v. *The Earl of Stamford*, 1 Phill. 737. *Attorney-General* v. *Corporation of Ludlow*, 2 Phill. 685.

HUSBAND AND WIFE.

1. *Surety.—Interest.—Mortgage.*—Husband and wife mortgaged their respective estates for securing the husband's debt. Both estates were sold and conveyed free from the mortgage, and in 1832 the debt was paid out of the produce of the wife's estate. In 1841, a bill was filed to have the amount recouped out of the produce of the estate of the husband which was in Court: *Held*, that the representative of the wife was not entitled to interest on the amount paid. *Lancaster* v. *Evors*, 10 Beav. 266.

2. *Parol agreement.—Construction.—Furniture.*—To a bill by a husband, claiming, in his marital right against his wife and the trustees of their marriage settlement, part of the furniture of a house which was let furnished at an entire rent, the whole of which had, from the time of the marriage, been received by the wife for her separate use, and seeking to have the rent apportioned; the answer of the wife set up a parol agreement by the husband, made before the marriage, that the wife should possess the furniture in question for her separate use, although it was not included in the marriage settlement: *Held*, that the plaintiff had no equity to sustain a suit for an account of an apportioned part of the past rents; that the plaintiff had no equity to sustain a suit for the apportionment of the rent of the house and furniture, in respect of his alleged interest in the latter, unless it appeared that he was by some reason precluded from bringing his action at law to recover the furniture which he claimed; and that the plaintiff not having shown that he had no remedy at law, the bill must be dismissed.

Household furniture does not pass under the description of "fixtures and fittings up." *Simmons* v. *Simmons*, 6 Hare, 352.

3. *Separate use.*—A husband and wife joined as co-plaintiffs in a suit, in which the claim put forward was by the husband in right of his wife. He became bankrupt, and afterwards the wife alone filed a supplemental bill, stating a settlement, (suppressed in the original bill,) whereby the property had been settled to her separate use: *Held*, that she was entitled to relief, but only on the terms of her next friend consenting to become liable for the costs of the former proceedings, and paying the *extra* costs occasioned through the suppression of the settlement. *Howard* v. *Prince*, 10 Beav. 294.

4. *Equity to settlement.—Life-interest.—Chose in action—Survivorship.*—The wife's equity to a settlement attaches to her life-interest. The income of the wife's property being *choses in action*, possessed or reduced into possession in the life-time of her husband, belongs to the wife by survivorship and not to the representatives of the husband or his assignee. *Wilkinson* v. *Charlesworth*, *Marsack* v. *Lyster*, 10 Beav. 324.

Cases cited in the judgment: Macaulay v. Phillips, 4 Ves. 15; Vaughan v. Buck, 13 Sim. 404; Bond v. Simmons, 3 Atk. 20; Sloech v. Thorington, 2 Ves. sen. 560; Wright v. Morley, 11 Ves. 12, 17; Pryor v. Hill, 4 Bro. C. C. 139; Jacob v. Amyatt, 1 Madd. 376 a; Ellison v. Elwin, 13 Sim. 309.

5. *Parol agreement.—Performance.*—Although a parol agreement before marriage, that particular chattels of the wife shall be possessed by her for her separate use, is not binding upon the husband, yet if the agreement be acted upon by the chattels being placed under the dominion of the trustees, and treated as separate property, the agreement may be made effectual. *Simmons* v. *Simmons*, 6 Hare, 352.

6. *Appointment.—Restraint of anticipation.*

—Although a bequest of stock for a married woman, for her separate use for her life, and after her decease, for her appointees by deed or will, directs that any appointment by deed shall not come into operation until after her death, the married woman is not thereby restrained from anticipation, or prevented from appointing the fund by an irrevocable deed. *Alexander* v. *Young*, 6 Hare, 393.

INJUNCTION.

Interference of the Court to preserve the property the subject of injunction in statu quo.—The Court will in many cases interfere to preserve property in *statu quo* during the pendency of a suit in which the rights to it are to be decided; and that without expressing, and often without having the means of forming, any opinion as to such rights. And, in order to support an injunction for such purpose, it is not necessary for the Court to decide upon the merits in favour of the plaintiff. If, therefore, the bill states a substantial question between the parties, the title to the injunction may be good, and yet the title to the relief prayed may ultimately fail. *Great Western Railway Company* v. *Birmingham and Oxford Junction Railway Company*, 2 Phill. 597.

Cases cited in the judgment: Eshliff v. Baldwin, 16 Ves. 267; Curtes v. Lord Beckingham, 3 V. & B. 168; Spiller v. Spiller, 3 Swan. 556.

JOINT LIABILITIES.

Defendant.—Witness.—*A.* sued *B.* to recover from him his share in the loss of a joint speculation, in which *A.* alleged that *A.*, *B.*, and *C.*, and *D.* had been engaged. *A.* had settled with *C.* and *D.*, who were, nevertheless, made defendants: *Held*, (independently of the statute 6 & 7 Vict. c. 85,) that *C.*, who had been released by the plaintiff, and disclaimed all right against the plaintiff and co-defendants, was a competent witness to prove that *B.* had been engaged in the speculation. *Hills* v. *Nash*, 10 Beav. 309.

Cases cited in the judgment: Blackett v. Weir, 5 B. & Cr. 385; Tayler v. Cohen, 4 Bing. 53.

JURISDICTION.

Case in which the Court will allow its process to be inquired of in a Court of Law.—The rule that this Court will not allow its process to be inquired of in a court of law, is only for the protection of the party who has been instrumental in enforcing it, and does not give the party complaining of its exercise a right to elect between a reference to the Master and an action at law. *Arrowsmith* v. *Hill*, 2 Phill. 609.

LACHES.

Statute of Limitations.—Legacy.—A testator bequeathed to his widow a pecuniary legacy and a life annuity. She survived him 28 years, and, after his death, her executor filed a bill for their recovery. No explanation was given of the circumstances, and no proof of any intermediate payment. The bill was dismissed on the ground of great laches. *Pattison* v. *Hawksworth*, 10 Beav. 379.

LIEN.

The term "lien" does not properly describe the right of a part owner to be reimbursed, out of the gross freight, the amount of expenses incurred in the prior repair and outfit of a ship. *Green* v. *Briggs*, 6 Hare, 400.

MORTGAGE.

See *Broker; Husband and wife*, 1.

NATIONAL DEBT COMMISSIONERS.

Retransfer of funds.—Petition or bill.—The proper form of proceeding to recover stock and dividends, unclaimed for 10 years, and carried over to the account of the Commissioners for the Reduction of the National Debt, under the statute 56 G. 3, c. 60, is, by petition, to be served upon the Attorney-General or the Commissioners, and not by bill in the first instance; and if there be conflicting claims to the fund, the Court will give directions for the trial of the rights of the parties between themselves, either by suit or otherwise. *Hunt* v. *Peacock*, 6 Hare, 361.

Cases cited in the judgment: Exparte Lovell, 2 J. & W. 397; Exparte Gillett, 3 Madd. 28.

PAROL AGREEMENT.

See *Husband and wife*, 2, 5.

PARTNERSHIP.

1. *Duration.—Rights of surviving, and representatives of deceased.*—Articles of partnership between two partners as brewers, maltsters, &c., covenanting with each other, that they and their respective executors and administrators, would continue partners for 21 years, determinable upon the death of both partners, unless their respective representatives should agree to continue the business for the residue of the term; and empowering either partner to sell his share in the partnership property, (offering it first to the other partner,) so that the purchaser should not be entitled to the possession of the partnership property, until the expiration of the partnership, without the consent of the other partner: empowering also each partner, either in his lifetime or under his will, to introduce one or more relations, being sons, brothers, or nephews, into the partnership to take all or a portion of his share during the continuance of the partnership; and providing, that in case of the death of either or both partners during the term, after having introduced such relation, the person so introduced should be considered as the original partner; providing, also, that in case of the death of either partner during the term, without having introduced such relation, the business should be carried on by the surviving partner, and the executors, administrators, or trustees of the deceased partner; but making no provision for the case (which happened,) of the death of one partner during the term, and his executors or administrators refusing to be concerned in the business with the surviving partner, and calling for an immediate dissolution, and a sale, and distribution of the partnership property, the surviving partner not consenting to such dissolution or sale; *Held*, in a suit

by the executors of the deceased partner against the survivor for a dissolution, that the provisions in the articles for the continuance of the partnership during the term of 21 years, could not be enforced in equity by way of specific performance of the partnership contract against the representatives of a deceased partner, either by way of relief in a suit on which such surviving partner was plaintiff, or by way of protection in a suit in which he was defendant; and, inasmuch as the articles could not be so enforced, the plaintiffs, the executors of the deceased partner, repudiating the partnership, were entitled to a decree for a dissolution: but that such relief would be given to them in equity, subject to any legal right which the surviving partner had, to recover damages against the executors of the deceased partner for a breach of the covenants contained in the articles; and that the amount of any damages which might be recovered in such an action must be added to the credit side of the account of the surviving partner, to be taken under the decree. *Downs* v. *Collins*, 6 Hare, 418.

2. *Power of substitution of representative of deceased partner.*—The obligation reserved to the executors of the deceased partner to enter into the partnership with a surviving partner, must be accompanied by the obligation on the part of the surviving partner to admit them; and unless the option be confined to the representatives of the partners who shall first die, the surviving partner must have the option of entering into partnership with the representatives of the deceased partner, with the same accompanying obligation on their part to admit him. *Downs* v. *Collins*, 6 Hare, 436.

3. *Specific performance.*—Specific performance of a partnership contract for an absolute term of years, leaving undefined the amount of the capital, and the manner in which it is to be provided, the mode of carrying on the business being discretionary, cannot be enforced in a court of equity; and the Court being unable to enforce the entire contract, will not enforce it in part, as against the representatives of a deceased partner, by refusing them a decree for the dissolution of the partnership and the sale of the property, which had, under the contract, been specifically devoted to the partnership business. *Downs* v. *Collins*, 6 Hare, 437.

PERSONAL REPRESENTATIVE.

The expression "personal representatives" and "legal representatives," have, in some cases been held to be of identical meaning, but they are not necessarily so. *Kilner* v. *Leech*, 10 Beav. 362.

PRINCIPAL AND AGENT.

See *Broker*.

RECEIVER.

Injunction.—A railway company, without the leave of the Court, took proceedings under the Lands' Clauses Consolidation Act, to take possession of lands in the possession of the Receiver under the Court. On an *exparte* motion they were restrained. *Tait* v. *Smith*, 10 Beav. 318.

SHIP AND FREIGHT.

Repair and outfit.—Application of profits.—Part owners and mortgagees.—Part owners are tenants in common of a ship, but jointly interested in her use and employment, and the law as to the earnings of a ship, whether as to freight, cargo, or otherwise, follows the general law of partnership.

A part owner of a ship has a right to require the gross freight to be applied, in the first place, in payment of the expense of the outfit of the ship for the voyage in which the freight was earned, notwithstanding he might sue his co-owners for their proportion of the expenses before the adventure ends.

The same rule applies to the expenses of repairs to the hull of a ship, where such repairs were done with a view to the particular adventure in which the earnings were made, and without which that adventure could not have been undertaken; and it would seem that the circumstance that such repairs are not exhausted in the adventure, does not create any exception to the rule. *Green* v. *Briggs*, 6 Hare, 395.

Cases cited in the judgment: Doddington v. Hallett, 1 Ves. 497; Exparte Harrison, 2 Rose, 76; Exparte Young, 2 Rose, 78, *n.*; 2 Ves. & B. 242; Holderness v. Shackels, 8 B. & C. 612; Exparte Hill, 1 Madd. 66; Exparte Christie, 10 Ves. 105; Helme v. Smith, 7 Bing. 709; Case v. Davidson, 5 M. & Sel. 79; 8 Price, 542.

SPECIFIC PERFORMANCE.

See *Partnership*.

TRUSTEES.

1. *Powers of charity trustees appointed under the Municipal Corporation Act.*—Charity trustees, appointed under the 5 & 6 W. 4, c. 76, are invested by their appointment with all the rights and powers, as such trustees, which formerly belonged to the corporation or corporate officers for whom they are substituted. *Attorney-Gen.* v. *Corporation of Ludlow*, 2 Phill. 685.

2. *Breach of trust.—Trustee and cestui que trust.*—Trustees made personally responsible for the consequences of their neglect to enforce a covenant contained in a marriage settlement. By a marriage settlement it was covenanted and agreed, that 5,000*l.* consols, part of the wife's property, should be transferred to trustees, upon certain trusts for the husband, wife, and children. At the time of the settlement, a sum of 4,946*l.* was standing in the name of the wife; but the trustees took no steps to enforce a transfer, and it was sold out and misapplied by the husband: *Held*, that the trustees were personally responsible for the loss; and, secondly, that they were not relieved from this liability by the trustee indemnity clause, declaring that they should not be liable "for any casual or involuntary loss," without their wilful default, but "for such monies only as should actually come to their hands." *Fenwick* v. *Greenwell*, 10 Beav. 412.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 17, 1849.

"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

LIFE POLICIES OF ASSURANCE BILL.

A PRACTICAL measure of some importance has been prepared and brought into the Commons House of Parliament, by Mr. William Fagan, the member for Cork City, and Mr. Mullings, "To make Life Policies of Assurance assignable, and to make other provisions in respect thereof." The preamble of this bill recites, that Policies of Assurance on lives are assignable at law in Scotland, and that it is expedient they should be made assignable, and the law in this respect rendered uniform throughout the United Kingdom, as well as that other amendments should be made in the laws relating to such policies, and then proceeds to enact, that after the passing of this act:

"All Assignments of Policies of Assurance on Lives, whether notice, unless as hereinafter excepted, of such assignments be given to the assurers or not, shall vest in the assignees thereof all such property, right and interest in such policies, and in the monies recoverable under and by virtue of the same, as the assignors of such policies had therein at the time of such assignments, subject only to such equities as may exist between the assignors and assignees and those claiming under them respectively; and after such assignments, the assignors of the policies so assigned shall not have power to surrender such policies to the assurers, nor to recover, receive, release, or discharge the monies assured thereby, or any part thereof respectively: Provided always, that the assignment of any policy shall not deprive the assurers of any right or lien they may have at law or equity on or in such policy, or of resisting the payment of the monies thereby assured, on the ground of breach of contract or otherwise, in the same manner to all intents and purposes as if such policy had not been assigned."

The second section extends the provisions of the act, to assurances made prior to the passing thereof and then subsisting and in force; with this important proviso, however, that notice of the assignment has been or shall be given at the office of the assurers.

The next section provides, that the assignees of such policies shall be entitled to recover and receive the monies assured in their own names, and that the receipt of the assignee shall be a sufficient discharge to the assurers.

The fourth section enacts, that a memorandum of an assignment, signed by the assignor, and attested, indorsed on the policy in a form prescribed, "shall be deemed to be notice of such assignment to the assurers and all persons and parties whatsoever." The efficiency of this provision is at least questionable. As we understand it, the assignor may secretly indorse the memorandum of assignment on his policy, and after he has signed it, in the presence of a witness totally ignorant of its contents, may, lock it up in his desk, and this proceeding is to operate as notice of the assignment to all the world!

By the fifth section, the memorandum of assignment may be dispensed with, if a form of assignment provided by the act and properly stamped is indorsed on the policies,

but no policy is to be deemed duly assigned at law, within the meaning of the act, unless one or other of the forms provided by the act is indorsed thereon; and the Commissioners of Stamps are authorised to affix the proper assignment stamps upon such policies.

The seventh section proposes to effect a change of some practical importance, and we are bound to add, what appears to us to be an equitable and beneficial change, in favour of persons insured. It provides:

"That the statement of the age in any Policy of Assurance effected after the *passing of this act* of the person whose life shall be thereby assured shall, in case of dispute or litigation, be taken to be primâ facie evidence in support of the age specified therein, whether the same be admitted or endorsed by the assurers on the policy or not: Provided always, that if the age be not so admitted or endorsed, it shall be competent for the assurers to prove the incorrectness of the same, and that nothing herein contained shall make the assurers liable to the payment of the sum assured on proof by them of mis-statement of age in any such policy."

The effect of this provision will be, to prevent the party beneficially interested in a policy, from being called upon to adduce any evidence as to the age of the person whose life is insured, unless the accuracy of the statement in the policy be impeached by the assurers. In the principle of the measure, so far as it facilitates the assignment of Life Policies, and gives the assignee the power of suing in his own name, we see much to approve; but the enactments relating to the indorsement of prescribed forms of a memorandum of assignment on the policy, would, we have reason to think, be found materially to incumber and impede the beneficial operation of the measure, and might be very judiciously omitted from the bill.

The system of Life Insurance has grown up, extended, and flourished, with invaluable advantage to the community, without assistance from legislative enactments. The only instance in which the legislature has hitherto interfered, (unless for revenue purposes by means of the stamp acts,) has been, by the statute of 14 G. 3, c. 48, which enacts, that no insurance shall be made on lives wherein the party insured hath no interest, and that in all policies the name of the interested party shall be inserted; and nothing more than the amount of the interest of the insured shall be recovered. How far these restrictions, which were intended to prevent gaming policies on lives, have been beneficial or mischievous, it is unnecessary now to inquire; but considering its importance and the number and magnitude of the social interests connected with and involved in it, we look with some apprehension and jealousy upon any legislative interference which could, by possibility, operate restrictively upon the system of Life Insurance. We believe the present bill has been framed with the opposite intention, but the instances are numerous where results have arisen from legislation very different to those contemplated by the legislators. Let us hope, that by a timely and careful consideration of its enactments, the bill to make Life Policies Assignable at Law, will not afford an additional illustration of a proposition which of late years has assumed the character of a truism!

BANKRUPT LAW CONSOLIDATION BILL.

It is stated in the report of the proceedings in the House of Lords of the 9th instant, by some of the newspapers, as follows:—

"The *Lord Chancellor* presented a petition from the Incorporated Law Society, in *favour* of the Bankruptcy Law Consolidation Bill.

"Lord *Brougham* supported the petition, contending that the bill had been formed upon an examination of a vast number of legal and commercial witnesses, and was a great improvement on the bill of last year. His lordship concluded by laying on the table the report of the committee on this subject. He proposed to have the report printed, and to let the further progress of the bill stand over till the 10th of *May*, in order that their lordships and the public might have an opportunity of making themselves fully acquainted with its provisions.

"Lord *Wharncliffe* thought that the noble and learned lord deserved great credit for the judicious labour which he had bestowed on this bill, and stated that the mercantile classes were perfectly satisfied with the contemplated changes, so far as they went."

On the votes of the House of Lords it is thus recorded:—"Petition of the Society of Attorneys, Solicitors, Proctors, and others, not being Barristers, under their common seal, that the *further progress of the bill may be postponed till after Easter*, in order to afford *time for considering the provisions* contained therein; read, and ordered to lie on the table."

It is afterwards entered on the proceedings that the "Select Committee on Bankruptcy and Insolvency and on the Bankrupt Law Consolidation Bill—First Report made

from the Committee and to be printed; minutes of evidence to be delivered out."

Amongst the bills in progress, the "Bankrupt Consolidation" Bill still stands "referred to the Select Committee on Bankruptcy and Insolvency."

But there is no doubt that Lord Brougham, on the suggestion of the Incorporated Law Society, agreed to postpone the bill till the 10th May. The following is the substance of the Law Society's Petition:—

"That a bill has been recently introduced into their Lordships' House, intituled, 'An Act to Amend, Methodize, and Consolidate the Laws Relating to Bankrupts, and to Arrangements between Debtors and Creditors, with the concurrence of a certain number thereof, and to the Distribution of the Estates of Deceased Debtors in certain cases.'

"That such bill is of great importance and extent, comprehending, as the petitioners submit, four separate and distinct objects.

"1st. The constitution of a new Court of Appeal, and many material alterations in the present mode of procedure in the Courts of Bankruptcy.

"2nd. An entire code of Bankrupt Law, affecting the rights and interests of creditors, repealing all the existing statutes, re-enacting a large part of them, but with many important alterations and additions, and the restoration of several enactments contained in repealed statutes.

"3rd. New arrangements between debtors and creditors not hitherto dealt with by the Court of Bankruptcy.

"4th. The distribution of the estates of deceased debtors in the Court of Bankruptcy instead of the Court of Chancery.

"That the proposed alterations require, as the petitioners submit, much consideration and great caution.

"That the petitioners are desirous that the suitors should have the benefit of many of the alterations contemplated by the bill; but inasmuch as those alterations interfere greatly with a long course of decisions and with settled principles of law, their general effect and practicability ought to be maturely weighed and considered.

"That the proposed removal of the administration of the assets of deceased persons from the jurisdiction of the Court of Chancery to the Court of Bankruptcy, will involve the rights of priority amongst various classes of creditors, the claims of legatees, the duties and liabilities of trustees and executors, and many other important legal consequences.

"That considering the magnitude of the questions comprehended in the various parts of the bill, in reference both to the principles of the law, and the practice of the Courts; and considering the short time which has elapsed since the bill was printed—

"The petitioners therefore prayed their Lordships that the further progress of the bill should be postponed until after the Easter recess, or such other time as to their Lordships might seem meet, in order to afford time and opportunity for considering the numerous provisions and important alterations, not only in the practice and administration of the law, but also in the principles of the law as now settled and established."

STAMP OFFICE.

APPREHENDED REMOVAL FROM SOMERSET HOUSE.

THERE was a general report that the business of the Stamp-office on the consolidation of the Board of Excise with that of the Stamps and Taxes, would be removed to the Excise Building in Broad-street. Several memorials were presented to the Lords of the Treasury, from different classes of the community, and amongst others from the attorneys and solicitors of London, through the medium of the Incorporated Law Society. It was represented:

"That the stamp duties arising from conveyances, mortgages, settlements, and other deeds and instruments connected with the law, and on legacies and residuary estates and intestacies, amount to three-fourths of the entire produce of the stamp revenue.

"That such stamp duties are almost exclusively paid by attorneys and solicitors personally, or by law stationers and others employed by them, who are in the daily habit of taking large sums to the Stamp-office in payment of the various duties.

"That the business of at least three-fourths of the attorneys and solicitors of London, is carried on in the Inns of Court and Chancery, and the vicinity thereof, and a considerable proportion of the remaining fourth is conducted westward of Somerset House.

"That the attorneys and solicitors residing in the metropolis, are very frequently required personally to attend at the Stamp-office before the Board of Commissioners or their officers, in order to pay the various duties on deeds, to procure additional stamps, to increase probate or administration duties, and to obtain a return thereof, and the transfer or allowance of misused or spoiled stamps, to pass accounts relating to residuary estates and intestacies, and to pay duties on legacies and shares of residue, and other matters connected with this branch of the revenue.

"That the situation of the present Stamp-office at Somerset House is most convenient for the transaction of business by the very large majority of the practising attorneys and solicitors of London before referred to, and the memorialists respectfully submit, is peculiarly adapted, by its central situation, irrespective of its vicinity to the Inns of Court and Chancery, to suit the convenience of a large

majority of her Majesty's subjects carrying on business in the metropolis, whereas the situation of the present Excise-office in Broad-street, being at the eastern part of the metropolis, would be convenient to those persons only who carry on business in the city, and who must pass Somerset House in their way to Westminster and to the various offices of the several courts of law and equity, while those carrying on business in the central and western portions of London would be put by the removal to the most serious inconvenience."

The act having passed to consolidate these Boards under the title of "The Inland Revenue," it became necessary to ascertain the intentions of Government, and an inquiry has been made, as appears by the votes of the Chancellor of the Exchequer, by Mr. Mullings, the Member for Cirencester, and the answer is to the following purport: That it is the wish of the Government to bring the Excise business to Somerset House, but that at present there are difficulties in the way of such an arrangement. It was also stated, that there was no probability of the Stamp business being removed from Somerset House, and certainly at present there was no intention of such a kind.

THE REAL PROPERTY BILLS.

The present Session has afforded an abundant crop of Bills relating to the Law of Property and Conveyancing. The Clauses of Lord Brougham's *Short Forms of Deeds* Bill, for such is its object, we stated at p. 306, *ante*. Under this act, if passed, the Taxing Masters are to allow for the skill, labour, and responsibility of preparing deeds, *not for their length*. The bill stands for third reading in the House of Lords.

The *Registration of Deeds* Bill was fully printed at p. 346, *ante*, and the debate on the second reading was noticed in the last number, p. 368.

It seems evident that the government will not allow this bill to be proceeded with; but that when the Commissioners have made their Report, a bill will be brought in to carry their recommendations into effect.

A third bill, for the Consolidation and Amendment of the *Trustees' Acts*, will be found in a separate article in the present number. In most respects this appears to be a useful measure, but we shall hereafter advert further to its objects and details.

CONVEYANCE OF PROPERTY VESTED IN TRUSTEES.

A BILL has been brought in by Mr. Headlam and Mr. Bouverie, to "Consolidate and amend the Laws relating to the Conveyance and Transfer of Real and Personal Property vested in Mortgagees, Trustees, and Persons under Legal Disabilities." It recites the 1 Wm. 4, c. 60, "for amending the Laws respecting Conveyance and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give Effect to their Decrees and Orders, in certain Cases,"—the 5 W. 4, c. 23, "for the Amendment of the Law relative to the Escheat and Forfeiture of Real and Personal Property holden in trust,"—And the 2 Vict. c. 69, "To remove Doubts respecting Conveyances of Estates vested in Heirs and Devisees of Mortgagees."

In the present bill it is proposed to consolidate and enlarge these acts by the provisions, of which the following is the substance:—

1st. As to Lunatics.

When any *lunatic* or person of unsound mind shall be seised or possessed of any hereditaments upon any *trust* or by way of *mortgage*, the Lord Chancellor may order that such hereditaments be vested in such person or persons and for such estate as he shall direct; and every such order shall have the same effect as if the trustee or mortgagee being lunatic or of unsound mind had been sane, and had duly executed a conveyance or assignment to the purport of such order, (s. 3); and the like provision is made for any contingent right in any hereditaments upon any trust or by way of mortgage, (s. 4.)

Where any lunatic shall be *solely* entitled at law to any stock or to any chose in action upon any trust or by way of mortgage, the Lord Chancellor may make an order vesting the legal right to transfer such stock, or to receive the dividends or produce thereof, or to sue for and recover such chose in action, in any person or persons he may think proper to appoint; and where any person or persons shall be legally entitled *jointly* with any lunatic to any stock or chose in action upon any trust or by way of mortgage, it shall be lawful for the said Lord Chancellor to make an order vesting the legal right to transfer such stock, or to receive the dividends or produce thereof, or to sue for or recover such chose in action, either in such person or persons so jointly entitled, or in such person or persons so jointly entitled together with any person the said Lord Chancellor may think proper to appoint in the place of such lunatic or person of unsound mind, (s. 5).

Where any stock shall be standing in the

name of any *deceased person* whose personal representative is a lunatic, or where any chose in action shall be vested in any lunatic, as the personal representative of a deceased person, the Lord Chancellor may make an order vesting the legal right to transfer such stock, or to receive the dividends or produce thereof, or to sue for and recover such chose in action, in any person or persons he may think proper to appoint, (s. 6).

2ndly. As to Infants.

Where any *infant* shall be seised or possessed of any hereditaments upon any trust or by way of mortgage, it shall be lawful for the Court of Chancery to make an order vesting such hereditaments in such person or persons, and for such estate as the said Court shall direct; (s. 7); and the like as to the contingent rights of infant trustees and mortgagees, (s. 8).

Persons beneficially interested may convey in the place of an infant or lunatic trustee, (ss. 9, 10.)

3rdly. Of persons out of the Jurisdiction, or where it is doubtful who is the surviving Trustee, &c.

When any person solely or jointly seised or possessed of any hereditaments upon any trust shall be out of the jurisdiction of the Court of Chancery, the Court may make an order vesting such hereditaments in such person or persons, and for such estate as the said Court shall direct, (s. 11,) and the like, as to contingent rights of trustees, (s. 12).

Where there shall have been several persons jointly seised or possessed of any hereditaments upon any trust, and it shall be uncertain which of such trustees was the survivor, the Court of Chancery may make an order vesting such hereditaments in such person or persons, and for such estate as the said Court shall direct, (s. 13).

When it is uncertain whether the last trustees be living or dead, the Court may make a vesting order, (s. 14).

And when a trustee dies without an heir, the Court may make a vesting order, (s. 15).

Where any hereditaments are subject to a contingent right in an unborn person who upon coming into existence would in respect thereof become seised or possessed of such hereditaments upon any trust, the Court of Chancery may make an order which shall wholly release and discharge such hereditaments from such contingent right in such unborn person, (s. 16).

The Court is also empowered to convey in place of a *refusing* trustee, (s. 17).

4thly. As to Mortgagees in Trust.

Where any person to whom any hereditaments shall have been conveyed by way of mortgage shall have died without having entered into the possession or into the receipt of the rents or profits thereof, and the money due in respect of such mortgage shall have been paid to a personal representative of such person, then, if an heir or devisee of such person shall be out of the jurisdiction of the Court of Chancery, or shall neglect or refuse for the space of twenty-eight days next after a proper deed for conveying such hereditaments shall have been tendered to him or her by any person entitled to require the same, or by a duly authorised agent of such last-mentioned person, it shall be lawful for the Court of Chancery to make an order vesting such hereditaments in such person or persons and for such estate as the said Court shall direct, (s. 18).

The like powers as to the heirs and devisees, of a mortgagee, (s. 19).

The Court also may vest hereditaments in other persons when mortgagees have died without having entered into possession, (s. 20).

5thly. The Court may itself appoint a Trustee to convey, or may make a Vesting Order.

In every case where the Lord Chancellor, or the Court of Chancery, shall, under the provisions of this act, be enabled to make an order having the effect of a conveyance or assignment of any hereditaments, the Lord Chancellor, or the Court of Chancery, (as the case may be,) should it be deemed more convenient, may make an order appointing a person to convey or assign such hereditaments, (s. 21).

As to lands in Lancaster and Durham the Court of the Duchy Chamber, &c., shall have the like powers, (s. 22).

Power is also given enabling persons beneficially interested to convey in place of trustee out of jurisdiction, (ss. 23, 24).

When trustees of stock are out of the jurisdiction, the Court may make a vesting order, (s. 25).

When trustee of stock refuses to transfer or receive and pay over dividends for thirty-one days, the Court may make a vesting order (ss. 26, 27).

So when stock is standing in the name of a deceased person and his representative refuses to act for 31 days, the Court may make a vesting order, (s. 28); and the effect of an order vesting the legal right to transfer stock is thus stated in the 29th section of the bill:—

Where any order shall have been made under any of the provisions of this act vesting the legal right to any stock in any person or persons appointed by the Lord Chancellor or the Court of Chancery, such legal right shall vest according, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names or otherwise, or relating to the receipt of the dividends thereof, to the extent and in conformity with the terms of such order; and the Bank of England, and all companies and associations whatever, and all persons shall be equally bound and compellable to comply with the requisitions of such person or persons

so appointed as aforesaid, to the extent and in conformity with the terms of such order as the said Bank of England, or such companies, associations, or persons, would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made; and after notice of any such order of the Lord Chancellor intrusted as aforesaid, or of the Court of Chancery, concerning any stock, shall have been given, it shall not be lawful for the Bank of England, or any company or association whatever, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made in any matter whatever relating to the transfer of such stock, or the payment of the dividends or produce thereof.

As to choses in action it is proposed, that—

Where any order shall have been made under the provisions of this act, vesting the legal right to sue for or recover any chose in action in any person or persons, such legal right shall vest accordingly, and thereupon it shall be lawful for the person or persons so appointed to carry on, commence, and prosecute, in their or his own name or names, any action, suit, or other proceeding at law or in equity for the recovery of such chose in action, and in the same manner in all respects as the person in whose place an appointment shall have been made could been sued for or recovered such chose in action, (s. 30).

In trusts for the payment of debts out of real estate, it is provided, that—

When a decree shall have been made by any Court of Equity directing the sale of any hereditaments for the payment of any of the debts of any deceased person, every person seised or possessed of such hereditaments, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed to be so seised or possessed or entitled, as the case may be, upon a trust within the meaning of this act; and the Court of Chancery is hereby empowered to make a like order concerning the contingent right, under the will of such deceased debtor, of any unborn person, as the said Court is enabled under the provisions of this act to make concerning the contingent right in any hereditaments of an unborn trustee, (s. 31).

The Court is to declare what parties are trustees of hereditaments comprised in any suit, and as to the interests of persons unborn, (s. 32). The act is also to apply to constructive trusts, (s. 33); and applications may be made to the Court by any person beneficially interested in the subject of the trust:

An order concerning any hereditaments, stock, or chose in action subject to a trust may be made upon the application of any person beneficially interested in such hereditaments, stock, or chose in action, or upon the application of any person duly appointed as a trustee thereof, and that an order under any of the provisions herein-before contained concerning any hereditaments, stock, or chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, or of any person interested in the monies secured by such mortgage (s. 34).

An important power is then given to proceed before the Master in the first instance, to exhibit evidence by affidavit, and produce the necessary documents in support of the facts, and if such evidence shall be satisfactory to the Master, he shall give a certificate under his hand of the several material facts found by him to be true, and of his decision that such person is entitled to an order in the form set forth in such certificate, (s. 35).

Then any person who shall have obtained such certificate may apply by petition for an order to the effect set forth in such certificate, or for such other order as such person may deem himself entitled to upon the facts found by the Master, (s. 36); and with power to present a petition in the first instance to the Court, (s. 37).

Upon the hearing of any petition to the Court, whether a certificate from a Master shall have been obtained or not, the Lord Chancellor may direct a reference to one of the Masters to inquire into any facts which may be considered necessary to be established by such an investigation, (s. 38). And the Court may dismiss the petition with or without costs, (s. 39).

Power is also given to make an order in a cause, or to make two or more orders upon one petition. And the recitals in the order are to be conclusive evidence of facts recited, (ss. 40, 41, 42).

The Court is also to be empowered to appoint new trustees, (ss. 43, 44, 45); and the powers of trustees appointed by the Court are then defined, (ss. 46, 47).

There is to be no escheat of property held upon trust or mortgage on account of the conviction of the trustee or mortgagee, but the act is not to prevent escheat or forfeiture of hereditaments vested in trustees, so far as they are beneficially interested, (ss. 48, 49).

The money of infants and persons of un-

sound mind is to be paid into Court, (s. 50).

The 51st section contains an important provision, rendering the re-conveyance of mortgaged property unnecessary:—

That when a conveyance of any hereditaments shall be or shall have been made by way of mortgage, and when no entry shall have been made into the possession of such hereditaments or into the receipt of the rents and profits thereof under such conveyance, and when the person to whom such hereditaments shall have been so conveyed shall not have transferred, conveyed, or in any manner dealt with them during his lifetime, then upon payment of what is due upon such security to the person or persons entitled to receive the same, whether in his or their own right or as the personal representative or personal representatives of another, it shall be lawful for the person or persons so receiving and paying the said sum to endorse, together with a receipt for the sum so paid, a declaration that it is intended to discharge the said hereditaments under this act, whereupon on all questions as to the hereditaments comprised in the said conveyance, either at law or in equity, whether arising between the parties to such deed or others, the said conveyance deed whereon such endorsement shall have been made shall be deemed to have been void and of no effect from the day of the execution thereof, and all conveyances or assignments under any power or otherwise of such hereditaments made subject to such mortgage, either in express terms or otherwise, shall take effect and enure as if no such conveyance by way of mortgage had ever been made or executed.

The conveyance whereon any such endorsement shall have been made shall be deemed to have been void in manner aforesaid, unless and until it shall be shown that there had been any entry into the hereditaments comprised therein, or into the receipt of the rents and profits thereof under such conveyance, or unless or until it shall be shown that the mortgagee thereof had conveyed, assigned, or in any manner dealt with such hereditaments during his lifetime, (s. 52).

The Court is also to be authorized to make a decree in the absence of trustees.

That where in any suit commenced or to be commenced in the Court of Chancery it shall be made to appear to the Court by affidavit that diligent search and inquiry has been made after any person made a defendant, who is only a trustee, to serve him with the process of the Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to them to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court, and had appeared and filed his answer thereto, and had also appeared by his counsel and clerk at the hearing of such cause: Provided always, that no such decree shall bind, affect, or in anywise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors, or administrators, for or in respect of any estate, right, or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid, (s. 53).

By sections 54 and 55, the Master is empowered to dismiss applications with costs, and such costs may be paid out of the estate.

Commissions may be issued concerning persons of unsound mind, (s. 56).

And a suit may be directed to ascertain the right of a petitioner, (s. 57).

By sections 58 to 61 the powers of the Court of Chancery are to extend to property in the Colonies, and the powers of the Lord Chancellor in Lunacy may be exercised by the Lord Chancellor of Ireland; so the powers of the Lord Chancellor in Lunacy are to extend to property in the Colonies, and the powers given to the Court of Chancery may be exercised by that Court in Ireland.

The act is to be entitled "The Trustee Act, 1849."

ATTORNEYS' CERTIFICATE DUTY.

THE following are the statements contained in the Petition of the Members of the Plymouth Law Society, presented to the House of Commons by Lord Ebrington.

That by an act of parliament passed in the 25th year of the reign of his late Majesty King George the Third, cap. 80, the Certificate Duty of Attorneys, and a Tax on Warrants to Prosecute, were first imposed to make up an expected deficiency in the Shop Tax, and that the following annual duties were imposed by the said act:—

	£.	s.	d.
On Attorneys and Solicitors residing in London	5	0	0
Elsewhere	3	0	0

That the Shop Tax and the Stamp on Warrants to Prosecute were afterwards abolished, yet the Certificate Duty was retained, and that by an act of parliament passed in the 55th year of the reign of his late Majesty king George the Third, cap. 184, the following increased duties were imposed on attorneys, solicitors, and proctors;

	£	s.	d.
On those practising within the limits of the twopenny-post, who have been admitted for three years or upwards	12	0	0
On those not admitted so long .	6	0	0
On those residing elsewhere who have been admitted three years .	8	0	0
On those not admitted so long .	4	0	0

That by the same act a stamp duty of 120*l.* was charged upon all articles of clerkship to an attorney, solicitor, or proctor, and a further duty of 25*l.* upon his admission, and which, with the fees paid to the officers of the different courts thereon, amount in the whole to nearly the sum of 160*l.*

That in no other profession, and in no trade or business, is there such a heavy stamp duty on indentures of apprenticeship.

That the petitioners' profession is the only profession or trade in which an individual is restrained by law from estimating the value of his own time and services, and is the only profession upon which is imposed a separate and invidious tax; and that if a tax on the talent and industry of individuals be expedient, it ought to be levied, not only on the three learned professions, but on all merchants, bankers, manufacturers, traders, and others.

That the average income of attorneys and solicitors is only 300*l.* a year, and therefore they pay a further income-tax of 4*l.* per cent. per annum than the rest of the community.

That by several recent acts of parliament, and more particularly by the act passed in the 10th year of the reign of her present Majesty, Queen Victoria, cap. 95, commonly called the County Courts' Act, great reductions have been made in the practice and profits of attorneys and solicitors, yet no compensation has been made them, and they have still to pay the same taxes.

That the Certificate Duty presses unequally and oppressively on the junior members of the profession of attorneys and solicitors, inasmuch as those who hardly make sufficient for their subsistence pay the same as those who make considerable incomes.

That the Certificate Duty, and the tax on warrants to prosecute, were originally imposed and subsequently increased to make up an expected deficiency in the shop tax, and on the assumption that the profits of attorneys and solicitors were sufficiently ample to justify the imposition of a personal and extraordinary tax. Such principle of taxation is manifestly unsound and oppressive, and now, in consequence of the imposition of the Income Tax, doubly oppressive; but if it were the fact that the profits of attorneys and solicitors were sufficiently ample when the tax was imposed to justify such tax, the alterations made in the practice of the law by successive governments have now reduced the emoluments of attorneys and solicitors even below the limits of a fair remuneration for their services and responsibilities.

That the petitioners pay their equal share of all the taxes imposed on the community at large, and therefore feel particularly that the Certificate Duty peculiarly levied on their branch of the profession is not founded on any just principle, but is partial, unequal, and unjust.

The petitioners, therefore, pray that the Annual Duty on Certificates of Attorneys, Solicitors, and Proctors, may be wholly repealed.

ORDER OF COURT AS TO THE EASTER VACATION.

Friday, March 9, 1849.

WHEREAS by the first article of the eighth of the General Orders of the High Court of Chancery of the 8th of May, 1845, it is provided that the Easter Vacation is to commence and terminate on such days as the Lord Chancellor shall every year especially direct. Now I do hereby order, that the *Easter Vacation is to commence on Thursday the 5th day of April next, and terminate on Saturday the 14th day of April next.* And that this order be entered by the registrar, and set up in the several offices of this Court.

(Signed) COTTENHAM, C.
E. D. COLVILLE.

Registrars' Office, March 10, 1849.

CANDIDATES WHO PASSED THE EXAMINATION.

Hilary Term, 1849.

Names of Candidates.	*To whom Articled, Assigned, &c.*
Allen, William Simmons	William Morgan, Birmingham
Annesley, George	Robert Acton Pardoe, Bewdley
Atkinson, Anthony, jun., B.A.	John Blythe Robinson, Beverley
Barrow, Joseph	Edmund Ward, Prescot; Palgrave Simpson, 20, Bedford-row
Batley, Joseph, jun.	Thomas Brook, Huddersfield
Benson, Samuel Miles	Thomas Moore, Yeovil; William Elliott Oliver, 16, New Bridge-st.
Bickers, Thomas Linley	James Upton, jun., Tadcaster; J. Wilkinson Maude, Tadcaster
Bullen, Robert Hockley	James Rose, Bampton
Burland, Thomas Blanchard	John Myers, Beverley
Carnsew, Henry	Edward Lambert, 4, Raymond-buildings; Charles Frederick Chubb, 4, Verulam buildings
Carter, William Henry	William Elliott Oliver, 16, New Bridge-street
Chapman, Frederick	William Chapman, Devonport
Chattock, Richard Samuel	Edward Hunt Roberts, Exeter; James Terrell, Exeter; and further assigned to Robert Hull Terrell, 14, Gray's inn-square

Clark, Alfred	Henry Vickers, Sheffield; Edward Esdale Clark, Snaith
Claye, Thomas	Richard Claye, Manchester
Comins, William Willoughby	William Comins, Witheridge
D'Aeth, George William H., jun.	Samuel Waller, Cuckfield; Henry Hughes, 13, Clement's-inn
Dalton, John, jun.	Charles Gibson, Manchester; William Gibson, 64, Lincoln's-inn-fields
Dashwood, Henry Charles	Samuel Foot, Salisbury; Charles Henry Radcliffe, Salisbury; and further assigned to Thomas Dashwood, Sturminster, Newton
Davies, Robert	John Urmson, Warrington
Drummond, Nelson	Robert Benson, Cockermouth
Dyson, Arthur	William Dyson, 33, Southampton-row, and 19, Chancery-lane
Eady, George James	Thomas Chubb, Malmsbury
Evans, Richard, jun.	George Robinson, Wolverhampton
Forster, William	Henry Cooke, Norwich
Freestone, Anthony Sexton	E. Freestone, Norwich; Robert Gamlen, 3, Gray's-inn-square
Golding, Thomas Mingaye	John Wardale King, Walsham-le-Willows
Goodwin, Henry Wycliffe, B. A.	Charles Goodwin, King's Lynn
Govett, Charles Albert	John Randall, 10, King's Bench Walk, Temple
Griffiths, Stephen Wells	George Edmunds Williams, Cheltenham
Guy, Augustus George	Joseph Guy, Gainsborough
Hardwick, Edward	John Lofthouse, Leeds, George Nelson Emmet, 14, Bloomsbury-sq.; and further assigned to Finlay Knight, 14, Bloomsbury-square
Hartley, William	Joseph Heath, Settle (deceased); George Hartley, Settle
Harvey, Enoch	Thomas Harvey, Liverpool; Matthew Dobson Lowndes, Liverpool
Hawker, Frederick John	William Dommett, Chard
Hays, William Stephens	John Bubb, Cheltenham; John Surman Cox, Cheltenham
Helder, Augustus	Richard Armitstead, Whitehaven
Heywood, Charles	Thomas Potter, Manchester
Holloway, Benjamin John	Richard Holloway, Tbame
How, Richard Nesbit	John Shuckburgh How, Tiverton; Thomas Edgcombe Parson, 61, Lincoln's-inn-fields
Howard, John	Edward Towsey, Quality-court, Chancery-lane; William Foster Geach, Pontypool; then assigned to Francis George Sherrard, Pontypool; and further assigned to Stephen Towgood, Newport
Husband, J. Edward Colvile	Edwin Wyatt, St. Asaph; Charles John Bunsen, Lincoln's-inn-fields
Ingram, John	Frederick Ellman, Battle
Iveson, Francis	James Baker Bainton, Beverley
Jones, Richard Edward	James John Brettell, 2, Staple-inn
Knight, George Henry	Charles Knight, late of 4, Union-Court, Old Broad-street, (deceased); Robert Jennings Crosse, late of Essex-Court, now of Southmolton; and further assigned to Thomas Sismey, late of Essex-court, now of 11, Serjeant's-inn
M'Dermott, Robert Holland	Edward Thomas Whitaker, 12, Lincoln's-inn-fields
Maddock, Charles, B.A.	Alfred Bell, 59, Lincoln's-inn-fields
Mann, Edward	John Owen, Manchester
Matthews, John	Hull Terrell, 30, Basinghall-street
Mears, St. John John	John Mears, Bagshot
Merrils, Josiah	George Hawksley Capes, Epworth
Morris, John	Griffith Jones Williams, Dolgelly
Morrison, Geo. Carter	Alexander Hart, Dorking; Charles James Abbott, 8, New Inn
Murray, Archibald	John Murray, 7, Whitehall-place
Noakes, Benjamin Tompsett	Thomas Baker, 34, Lime-street
North, William	Edwin Eddison, Leeds
Parsons, Arthur	Sam. Parsons, Nottingham (deceased); John Brewster, Nottingham
Pearce, William Peter	John Meriscoe Pearce, 10, St. Swithin's-lane
Perry, John Connorton	Abraham Cutto, 28, Back-street, Southwark
Phillips, George	Henry John Barker, Wem
Piper, George Harry	Thomas Jones, Ledbury
Poley, Walter Johnson Weller	Richard Almack, Long Melford
Rashleigh, Philip George	John Slade, late of Devizes; Joseph Randolph Mullins, Cirencester
Richards, Charles Thomas	Henry Richards, Croydon
Richardson, George	Thomas Potter, Manchester; Stephen Heelis, Manchester
Roberts, Richard Willett	Richard John Roberts, late of 17, Lincoln's-inn-fields, now of Worcester
Roby, William	Thomas Rogerson, Liverpool
Rodwell, Hasell	George Constantine Edgar Bacon, Ipswich; Charles Steward, Ipswich
Rowden, Charles Wetherell	Frederick John Jenkins, late of Peterborough (deceased); John Glenton Atkinson, Peterborough
Russell, James	Robert Russell, 23, Martin's-lane
Sandys, William George	William Sandys, 5, Gray's-inn-square
Saunders, George Morley	Messrs. Jarvis, Lynn
Shepard, Horace	John Shepard, Usk
Smith, Baker	Baker Peter Smith, 77, Basinghall-street
Smith, Edward Harford	Edward Smith, 20, Highbury-crescent, and 5, Chancery-lane

Smith, Frederick	William Wyke Smith, 16, Southampton-street, Bloomsbury; Alfred Turner, 32, Red Lion-square, and further assigned to William Withall, Parliament-street
Smith, Hubert	John Jacob Smith, Bridgnorth
Sutcliffe, Richard Clegg	Richard Shaw, Burnley; Robert Artindale, Burnley
Taylor, Frederick	Walter Ephraim Goatly, 3, Cork-street, Burlington-gardens
Taylor, Robert	Samuel Potter, 36, King-street, Cheapside
Templer, William Force	John Lethbridge Cowlard, Launceston
Thorney, John Joseph	John Thorney, Hull; Frederic Thomas Elgie, Worcester
Thornton, Henry Australia	George Abraham Crawley, 20, Whitehall-place
Tucker, William Owen, Jun.	William Owen Tucker, Sun Chambers, Threadneedle-street
Tweedie, Alexander Forbes	Matthew Hale, 6, Ely-place, (deceased); Frederick Lewes Austen, 6, Ely-place
White, Lindsell Fletcher	John Thomas White, 11, Bedford Row, Middlesex
White, William	William Lister White, Manchester
Whitehurst, Edward Capel	Oxley Tilson, 29, Coleman-street, (deceased); Thomas Tilson, 29, Coleman-street

RECENT DECISIONS IN THE SUPERIOR COURTS,

AND SHORT NOTES OF CASES.

Lord Chancellor.

His Royal Highness Prince Albert v. *Strange.*
Feb. 8, 1849.

INJUNCTION.—COPYRIGHT IN UNPUBLISHED WORKS.

Injunction restraining the publication of a catalogue of unpublished etchings, on the common law right of property, and on a breach of trust in obtaining the information.

This was a motion to dissolve an injunction, granted by the Vice-Chancellor Knight Bruce, restraining the defendant from publishing a catalogue of certain etchings.

Mr. *J. Russell*, Mr. *Rolt*, Mr. *Warren*, and Mr. *S. Smith*, for the appellants; The *Solicitor-General*, Mr. Serjeant *Talfourd*, and Mr. *W. M. James*, for the respondents.

The *Lord Chancellor* said, that the right to restrain the exhibitions of the etchings had been admitted, and the only question now was, whether the publishing of the catalogue of the prohibited etchings could be permitted. In this catalogue it was stated, that a fac simile autograph would be presented with the consent of her Majesty; but such consent had not been obtained, and the statement was an imposition on the public, and the Court would therefore interfere, as it would in the case of a manufacturer selling his goods under false representations. The plaintiff had a property in a series of works not published, or intended so to be, and it appeared that copies had been surreptitiously obtained. The defendant by his answer did not disclose the mode in which they were obtained, although he denied the knowledge of the fraudulent obtaining. The answer, therefore, had not met the case in the bill.

The question of property and of a breach of trust was involved in the present case. No doubt could be entertained as to the right of the owner in property in works of art,—the only question was, whether there had been any waiver of such right. In the case of publishing private letters, the sending them was alleged to be a waiver, as was the public performance of dramatic compositions. In the case of *Abernethy's Lectures*, the property in them was alleged to be waived by their delivery in public. The original right was not denied in any of these cases. If there was any right of property in unpublished works it was exclusive, but in this case the defendant claimed to participate in such right although an entire stranger, and that too, after having admitted the plaintiff's right to restrain the publication of the etchings. It was admitted that copies of the etchings could not be published, but how did the catalogue or description of them differ from a copy? Each conveyed information of the originals, and although the means were different, the effect was the same. The right to unpublished works did not depend on the law of copyright, but on the common law right in property. Thus, Lord Hardwicke, in 1754, restrained the clerk of Sir John Strange from publishing an abridgment of his manuscript cases on the Law of Evidence. There could be no doubt of the plaintiff's title, and that the right had been invaded in an unauthorised manner by the defendant—the injunction of the Court below must, therefore, be continued upon the common law right of property.

It could also be sustained upon the breach of trust disclosed on the pleadings. Copies had only been given to a few private friends, and the copies referred to in the catalogue could only have been obtained by a breach of trust. The case of *The Duke of Queensbury* v. *Shebbeare*, 2 Eden, 329, before Lord Hardwicke, cited in *Millar* v. *Taylor*, 4 Burr. 2330, was against the right to publish upon an inspection of copies given by the plaintiff. The Court must, in the absence of

any explanation, therefore assume, as Lord Eldon did in the case of *Abernethy's Lectures*, 3 Law J., 209, that it was through a breach of trust. His Lordship then referred to *Tipping* v. *Clarke*, 2 Hare, 393, and to Sir James Wigram's judgment thereon, and also to the unreported case before Lord Eldon in 1830, of *Wyatt* v. *Wilson*, in which the publication of a picture of George the Fourth on his death-bed was restrained. As to first sending the case to a court of law, the practice of this Court was to protect property of this nature from any injurious invasion without the owner's consent. It had been urged, that the injunction of the Court below was too extensive, including other etchings than those belonging to the plaintiff, but this objection was removed by the defendant having submitted to the injunction restraining the exhibition. The appeal from the decision of the Court below must, therefore, be dismissed with costs.

Allfrey v. *Allfrey and others.* Feb. 10, 14, 16, 21, 1849.

SETTLED ACCOUNTS.—REOPENING.

Held, *that where administrator's accounts appear to be fraudulent, any former settlement is void, and if relief be sought within a reasonable time after the fraud is discovered, the accounts may be retaken.* Held *also, that where there are only errors and omissions, leave would be granted to surcharge and falsify.*

THE plaintiff, William Allfrey, filed a bill in 1843, against the personal representatives of his uncle, Edward Allfrey, for re-investigating accounts submitted to the plaintiff by his uncle in 1825, and signed by him as correct. Edward Allfrey, it appeared, had upon the death of his brother George, in 1802, undertaken to administer his estate for the widow and five children, of whom the plaintiff was the youngest. The plaintiff, in 1839, was admitted to examine the accounts of Edward Allfrey, who died in 1834, and detected several gross errors therein, the existence of which he was ignorant of when he signed the accounts. The Master of the Rolls being of opinion that the accounts were false, and that merely to surcharge and falsify would be inadequate relief, decreed that the settled account should be set aside, and that the accounts of the testator's estate should be taken again, with special directions. From this decision the defendants appealed.

J. Parker, Wood, and *H. Clarke* for the appellants; *Bethell* and *Rasch* for the respondents.

The *Lord Chancellor* said, the only question to be considered was, whether the settled account should be set aside altogether, and fresh accounts taken, or whether the plaintiff should merely have a reference to surcharge and falsify. In *Vernon* v. *Vawdry*, 2 Atk. 119, it was held, that where there are only mistakes and omissions in a stated account, the party objecting will be allowed no more than to surcharge and falsify; but that if it is apparent to the Court that there has been fraud and imposition, the decree must be that the whole shall be reopened, notwithstanding that it was a stated account of 23 years' standing. The same distinction was observed in *Wedderburn* v. *Wedderburn*, 4 Myl. & Cr. 41, and in *Brownell* v. *Brownell*, 2 Bro. C. C. 61. In which latter case, however, Lord Kenyon, M. R., held that from the length of time that the plaintiff had suffered to elapse, he was only entitled to surcharge and falsify; and the same course was pursued in *Millar* v. *Craig*, 6 Beav. 433.

The *Court* was always inclined and bound to lean towards the injured, rather than the offending party, and length of time could not be any objection, where justice could only be done by opening the accounts. It appeared that the plaintiff had signed a memorandum, stating, that he had investigated the accounts; but it was clear he had not, from the fact, that a sum of about 9,000*l.* was in the funds at the decease of plaintiff's father, and that 4,000*l.* thereof had been sold and not accounted for. But here was an uncle and administrator, who had placed himself in *loco parentis* to his nephew, falsifying the administrator's accounts in such a manner, that even had the nephew investigated them, the fraud might not have been discovered, and the nephew would, therefore, be ignorant of the state of the accounts when he signed them. The frauds had only been discovered a short time before the bill was filed. The decree of the Master of the Rolls was correct in setting aside the alleged settled accounts. The appeal must, therefore, be dismissed with costs.

March 9.—*Sharpe* v. *Arbuthnot*—Order for the sale of cotton refused—all the parties not consenting.

— 9.—*Exparte Kent, in re Moore*—Stop order to be served on lunatic's committee in the event of his death, before any proceedings taken in reference to the estate.

— 9, 10.—*In re Dyce Sombre*—*Cur. ad. vult.*

— 10.—*In re Bagster*—Stand over.

— 10.—*In re Bataglier*—Order for payment of costs and sum recovered in action against lunatic's committee.

— 14.—*Norton* v. *Hepworth*—Leave given to serve the original solicitor with service of the bill of revivor.

— 14.—*In re Dawson* — Leave given to trustees to make allowance to infant on their own responsibility.

— 14.—*Evans* v. *Protheroe*—*Cur. ad. vult.*

— 14.—*Watson* v. *Life*—*Cur. ad. vult.*

Rolls Court.

Fox v. *Roberts and others.* March 1, 1849.

ISSUE AT LAW.—INFANT.—BORN ALIVE.

Issue directed to a Court of Law to ascertain whether an infant was still born.

THE testator, John Warne, it was alleged,

had issue, by Mary his wife, one child. The child was born on 1st April, 1831, but the question was, whether it was born alive or not. It was contended that it was born alive, but died almost immediately after its birth; in which case, the fee simple of certain estates vested in the infant under the will of the testator's father; and, upon its decease, descended to the defendant, John Austin, as heir-at-law. The testator had suffered a recovery with a view to acquire the fee, and to defeat the remainder over in default of issue to the party whose representatives the plaintiffs were. It was stated in the evidence, that the child had gaped and shown signs of life in a bath in which it had been put.

Lovatt and *Cooper* for the respective parties.

The *Master of the Rolls* directed an issue to be sent to the Court of Common Pleas, for the purpose of ascertaining whether the child was born alive or not.

Woolard and another v. *Hill.* March 3, 1849.

MARRIAGE SETTLEMENT. — PAYMENT OF ANNUITY OUT OF CAPITAL.

Where the income arising from personal estate was insufficient to pay an annuity under a marriage settlement, the capital was declared liable to make such deficiency good.

Upon the marriage of John Williams Hill with Rhoda his wife, it was covenanted by the settlement, that the husband should provide an annuity of 150*l.* for his wife if she survived, and that a sufficient fund should be provided to meet the payment. The settlor died in 1842, and his widow married one Thomas Woolard. It appeared that the income of the personal estate of the deceased was insufficient to pay the annuity, and this suit was therefore instituted against the personal representative. The cause now came on for further directions.

Turner, Humphry, Shebbeare, and *Willcock,* for the several parties.

The *Master of the Rolls* held, that the plaintiffs were entitled to have the deficiency in the annuity made good out of the capital, of which the personal estate consisted, as the income arising from the personal estate was insufficient.

March 8.—*Winn* v. *Fenwick*—Judgment on construction of marriage settlement.

— 9. — *Attorney-General* v. *Stevens and others*—Stand over.

— 9.—*Hall* v. *Franck*—Declaration made as prayed—defendants to pay the costs of the suit.

— 9.—*Padwick* v. *Platt*—Bill dismissed on the misjoinder of parties—costs reserved.

— 9.—*Dedy* v. *Cross*—Reference to the Master for account due on deeds, and to tax bill of costs—property to be re-conveyed.

— 10.—*Vallence* v. *Armiot*—Stand over to Michaelmas Term.

March 10.—*Barton* v. *Mills*—Judgment on construction of will.

— 10, 12.—*Attorney-General* v. *Pilgrim and others*—Lease set aside with costs—decree for account.

— 12, 13.—*Walker* v. *Milne*—Exceptions to Master's report allowed—report sent back for review.

— 14.—*Attorney-General* v. *Shiel*—Demurrer and answer to be taken off the file with costs.

— 14.—*Gregson* v. *Plymouth Great Western Dock Company and Fielder*—Stand over.

— 14.—*Attorney-General* v. *Pemberton*—Receiver appointed as prayed.

— 14.—*Morgan* v. *Morgan*—Part heard.

Vice-Chancellor of England.

In re Norman's Charity. Feb. 9, 1849.

CHARITY.—APPOINTMENT.—NEW TRUSTEES.

The Court refused, upon an affidavit of fitness, to appoint a new trustee in the place of one who died since the Master had made his report; but, in order to avoid the expense of a fresh reference, decreed a conveyance of the trust property to the surviving trustees.

It appeared that the twenty trustees originally appointed to the charity for the purpose of carrying out the testator's directions with regard to the binding of apprentices, had died. A petition was, therefore, presented to appoint new trustees in their stead; and, upon a reference directed to the Master, to approve of a scheme for the management of the charity, a report had been presented and twenty persons approved of as trustees. Since the report, however, Mr. Jermy, the Recorder of Norwich, to which place the charity related, who was one of the 20, had been murdered. This application was, therefore, made upon an affidavit of fitness to the Court to appoint a new trustee without a reference.

Rolt and *Chapman* in support of the motion.

The *Vice-Chancellor* observed, that the same necessity existed for the reference to the Master to inquire as to the fitness of the trustee proposed to be appointed, as existed at the time of the first application. This application must, therefore, be refused, but, to avoid the expense of a reference, the conveyance of the trust property might be made to the nineteen trustees who were already appointed.

Ex parte Turner, Drever v. *Mawdesley.* Feb. 17, 20, 1849.

LIABILITY OF TRUSTEE.

Circumstances wherein a trustee was held liable for the loss of money by the failure of bankers.

This suit was instituted to ascertain the rights of certain creditors to be paid their claims out of the estates of their debtor, Thomas Cross, in Lancashire and Cheshire. A petition was presented therein by Mr. Turner

a trustee, praying that he might not be charged with a sum of 918*l.*, part of the said estates, which had been lost by the failure of the Macclesfield Bank. The petitioner had been appointed a trustee in 1823, jointly with two others, and had, together with one other of the trustees, since deceased, placed in the above bank, to the separate account of the trust estate, certain monies received on account. The persons at the time of the failure of the bank entitled to the balance were infants. The petitioner, however, upon the reference to the Master to ascertain the state of the accounts, was found to have been improperly appointed a trustee, although he had always so acted.

The *Vice-Chancellor* said, that whether the petitioner was properly appointed or not, it was clear he had acted as trustee, and as such was made a party to this suit. The petitioner had placed a large sum of money in the bank, jointly in his own name and that of one other trustee, and in the year 1833, when there was a balance of 918*l.* in the bank, the other acting trustee died, and in 1841 the bank failed. The *cestui que trusts* at that time were infants, and the bill had not been filed by them but by the trustee. Although no order had been made for the payment of the money into Court, it was evidently the duty of the trustees to have done so. Under these circumstances, therefore, the petition must be dismissed with costs, and the *cestui que trust* must be declared not to be prejudiced by the loss incurred through the neglect of the trustees to place the trust-fund in safety.

[See *Tomlinson* v. *Troughton*, p. 335, *ante*, where a testator expressly directed that a trustee should not be liable for accidental loss.]

March 8.—*Clarke* v. *Manlove*—Injunction restraining infringement of patent granted.

— 9.—*Lewes* v. *Lewes*—Petition granted that trustees should receive the rents, and apply the same to the maintenance of bankrupt and his family.

— 9, 10.—*Collett* v. *Maule*—Exceptions to Master's report overruled.

— 13.—*Turner* v. *Nicholls*—Plea overruled; but afterwards by consent to stand for answer.

— 13.—*Attorney-General* v. *Broughton*—Decree declaring charity entitled to income bequeathed as far as personal estate sufficed—Costs to be paid out of the general assets.

Vice-Chancellor Knight Bruce.

(In Bankruptcy.)

Exparte Standerwicke, in re Dunn and others.

Jan. 17, 1849.

JOINDER OF PARTIES ON INDEMNITY.

The names of persons interested in joint property may be used on giving security.

THIS was an application by assignees for leave to use the names of certain other persons in proceedings at law which were requisite for the realisation of the property constituting the joint estate. It appeared that a partnership company, consisting of thirteen individuals, carried on business under the style of "The Vale of Neath Brewery Company," and that seven of them were likewise partners in another and separate firm, called the "Maesteg Iron Company." A fiat had issued in March 1847, against Brown, one of the thirteen partners, and assignees had been appointed, but both of them had subsequently become bankrupt. A fiat had issued in March, 1848, against the Iron Company, and in the following May against the Brewery Company. One of the thirteen was dead. It appeared that under the fiat against Brown, a dividend of 18*s.* in the pound had already been paid.

Bacon, *Glasse*, and *Terrell*, appeared for the respective assignees under the three fiats.

The *Vice-Chancellor* gave leave to the petitioners to use the names required upon an indemnity being given to the other assignees, as they were unwilling to be mixed up in a Chancery suit, although they did not object to the use of their names in any requisite legal proceedings.

March 8.—*William* v. *South Wales Railway Company*—Stand over, with leave to bring action.

— 8.—*Marshall* v. *Boyce*—Judgment on construction of will.

— 9.—*Exparte the Society for Promoting Christian Knowledge, In re Belke's Charity*—Order to insert advertisement for co-heirs to come in—and if none should appear, reference to the Master to appoint a proper person to convey to the petitioners.

— 9.—*In re the Kensington Charities, Exparte Brompton District Parish*—Reference to the Master to inquire what charities were within the act, and to approve of a scheme.

— 12.—*Watteau* v. *Billam*—Injunction restraining the indorsing or parting with bills of exchange.

— 12.—*Nettleton* v. *Stephenson*—Part heard.

— 12.—*Exparte Burton, In re Harvey, In re Ford; Christie, respondent*—Assignment of bill of exchange held good—Costs reserved.

— 14.—*Phelps* v. *Prothero*—Decree as prayed for—with general costs of the suit.

— 14.—*Wood* v. *North Staffordshire Railway Company*—Injunction refused on the company's bringing sufficient money into Court to cover the costs of action at law.

Vice-Chancellor Wigram.

Smith v. *Capron.* Feb. 12, 13, 1849.

DEMURRER.—ASSIGNMENT OF LEASE WITHOUT LESSOR'S CONSENT.

Where a lease contained a covenant not to assign, but no provision for re-entry in case of assignment, and there was an assent by the lessor's solicitor, though not stated on the bill to be with his authority, a demurrer was overruled.

THIS bill was filed for the specific performance of an agreement to purchase the lease of

a house in Great Ormond Street. It appeared that the lease had been granted in March, 1845, by Lord Monteagle and Lady Lucy Standish, to Mr. Wakefield, and contained a covenant, on the part of the lessee, not to assign or underlet the premises without the license in writing of the lessors. It was also covenanted that such license, if granted, was not to extend to any future assignment or demise of the premises, nor to be construed as waiving the covenant restraining alienation, but that it should be limited to the persons named therein. Mr. Wakefield, by indenture, reciting that Lord Monteagle was the surviving lessor, and that he had assented in writing to the assignment, afterwards assigned the lease to the plaintiff, who had since agreed to assign it to the defendant, but without the assent of Lord Monteagle being actually obtained. It, however, appeared that, in answer to an inquiry by the defendant, his lordship's solicitor had stated that such assent was of course where the proposed tenant was a responsible one, and that it would be granted in the case of assigning to the defendant.

Schomberg appeared in support of a demurrer to the bill, on the ground that the lease containing the covenant as aforesaid, the statement of the solicitor without an allegation of his authority so to state was insufficient, and that the lessor's consent should have been actually obtained.

Wood and *Southgate* contrà.

Cur. ad. vult.

The *Vice-Chancellor* said the question was, whether, upon the evidence proving the case as alleged by the bill, the defendant would be entitled at the hearing to have it dismissed, or whether the omission of an averment in the bill that the landlord's assent to the assignment had been obtained was fatal. It appeared that, although the original lease contained a covenant in restraint of assigning without consent, no proviso for re-entry, or of determining the lease, was shown in the case of assigning without consent. The assignment, therefore, appeared on the bill to be valid at law. The question was, whether there was such a breach of contract as would induce this Court to compel the parties to take the title. Without giving any opinion on the omission of the averment of the landlord's right of re-entry, the plaintiff at the hearing would be entitled to a reference; the demurrer, therefore, must be overruled.

March 8.—*De Visme* v. *De Visme*—Petition refused with costs.

— 8, 9.—*Pelly* v. *Wathen*—*Cur. ad. vult.*

— 10.—*In re the Godmanchester Free Grammar School*—Reference to the Master to approve of a scheme and for the appointment of trustees.

— 10, 13.—*Lord Granville* v. *M'Neill*—Appointment of new trustees held good.

— 9, 13, 14.—*Solicitor-General* v. *Corporation of Bath*—*Cur. ad. vult.*

Queen's Bench.

(Before the Four Judges.)

Turrill v. *Crawley.* Jan. 26, 1849.

INNKEEPER'S LIEN ON CARRIAGE BROUGHT BY GUEST.

An innkeeper is not bound to inquire whether a carriage brought by a guest is his property or not, and has a lien on it, though it should turn out to have been hired.

TROVER by a coachmaker against an innkeeper for a carriage. Plea, that the plaintiff was not possessed of the carriage as his own property, at the time when, &c. It appeared that a Miss Jerdan had brought the carriage in question to the defendant's hotel at Norwood, and left without paying her bill, and that the defendant detained the carriage in satisfaction of the amount of the bill. The bill contained a charge for the standing and cleaning of this carriage; and it turned out that the period for which it was hired to Miss Jerdan had not expired when the defendant first claimed to detain the carriage, but had elapsed before action brought. A verdict having been found for the defendant, a rule was granted on behalf of the plaintiff, to show cause why the verdict should not be set aside and entered for the plaintiff, on the ground that an innkeeper's right of lien did not extend to a carriage not the property of his guest, though in his possession.

The rule was argued for the plaintiff by Mr. *Whately* and Mr. *Hance*; and by Mr. *Martin* and Mr. *Hayes* for the defendant.

Lord *Denman*, C. J., and *Patteson*, J, thought it unnecessary in this case to determine the general question, whether an innkeeper had a right to detain any particular article in the possession of a guest, until the whole bill incurred by the guest was discharged; but they were clearly of opinion that the defendant had a lien on the carriage for house-room and care, and that as the amount of the claim for these was not tendered before action, the plaintiff was not entitled to recover. As the lien existed when the alleged conversion took place, the owner of the carriage could not be permitted to say it had come to an end.

Coleridge, J., and *Wightman*, J., agreed with Lord Denman and Patteson, J., and added, that whatever doubts might formerly have existed, it must now be taken as settled law, that an innkeeper's right of lien attached as well to goods of a third person in the possession of a guest, as to the goods actually belonging to a guest, citing *Robinson* v. *Wall*, 3 Bulstr. 269, and 1 Rolls Rep. 449; and *Johns* v. *Hill*, 3 Stark. 172. The rule to set aside the verdict was therefore discharged.

Regina v. *The Justices of Birmingham.* Feb. 8, 1849.

ASSESSMENT OF LITERARY INSTITUTION TO POOR-RATE, WHEN VALID.

A literary society is supported by "voluntary contributions," within the meaning of the

6 & 7 Vict. c. 36, when annual subscribers may discontinue their subscriptions without any other loss than the privilege of membership.

A society entitled to exemption under the act, is bound, if rated, to appeal to the Quarter Session, and if no appeal be entered, the rate cannot be resisted.

Upon a rule, calling upon the justices of Birmingham to show cause, why they should not issue their warrant for the purpose of enforcing a poor-rate which had been assessed upon the president of the Birmingham New Library, in respect of the premises occupied by him and used for the purposes of the said library, two questions were raised for the decision of that Court,—first, whether the institution was exempt from poor-rates since the passing of 6 & 7 Vict. c. 36; and, secondly, whether if such exemption existed, it should not have been urged as a ground of appeal against the rate, and was too late as an answer to the present application. It was admitted that, in order to bring the society within the exemption provided by the statute, it was necessary that it should be established exclusively for the promotion of literature and science, or of the fine arts, and be supported wholly or in part by voluntary contributions, and be prohibited by the bye-laws from making any distribution of its property among the members.

The case was argued in Michaelmas Term, by Mr. *Humfry* and Mr. *Mellor*, for the plaintiff, and Mr. *Miller*, for the defendants.

Lord *Denman* said, the Court was clearly of opinion, that the Birmingham New Library was a literary society within the meaning of the act.[a] There was some difficulty in ascertaining what was meant by a society "supported by voluntary contributions." It must mean that the subscriptions were considered voluntary if they were commenced or discontinued at the parties' own choice, without subjecting the subscribers to any action or loss, other than that of the privilege of membership. As to the objection that the society might dissolve itself and divide the common stock, the statute must be taken as applying to a continuing body, and not as intending to deprive a society of the exemption conferred, merely because the property of the society, on its dissolution, might become divisible among the members. Upon these grounds, the *Court* was of opinion that the society was entitled to the exemption claimed, and that the barrister had properly certified. Upon the second point, however, the judgment of the Court must be for the churchwardens and overseers, because the benefit of the exemption ought to have been claimed when the rate was made. The parties might have appealed to the Quarter Sessions, but as they had not so appealed, the right to exemption could not now be set up in answer to this application. The rule must, therefore, be absolute for a mandamus.

[a] See *Purvis* v. *Trail*, *ante* p. 324, where the first section of 6 & 7 Vict. c. 36, is printed.

Reg. v. *The Hammersmith Bridge Company.* Feb. 2, 1849.

BRIDGE CONNECTING TWO PARISHES.—APPORTIONMENT OF RATE.

Where the subject of rateable value is a bridge, connecting two parishes, and the approaches would be of no value without the bridge, the rateable value is to be assessed between the two parishes, in proportion to the value produced in each parish, and without reference to the relative extent of the approaches.

It appeared, upon a special case, that Hammersmith Bridge connects the parish of Fulham, in the county of Middlesex, with the parish of Barnes, in the county of Surrey, one moiety of the bridge being in one parish, and the second moiety in the other. The approaches to the bridge consist of three roads formed by the bridge company, of the length of 6,006 yards, of which length 678 yards are in the parish of Fulham, and 5,328 yards in the parish of Barnes. The toll-house was at the Fulham side. The net annual value to which the bridge company was to be assessed in both parishes, was admitted to be 720*l.* The question for the Court was, how this net rateable value was to be divided between the two parishes—in equal moieties, or in proporton to the land and roads occupied in each parish respectively?

The case was argued by *Pashley* and *Willes* at one side, and *Bodkin* and *Prentice* on the other.

Per Curiam. The bridge here is the source of rateable value. The approaches stand in the same relation to the bridge as stations to a railway, wharfs to a canal, or aqueducts and mains to a water company, which conduce indirectly to the production of rateable value. The principle of rating to be applied in dividing direct, from indirect, sources of profit was explained and acted upon in *R.* v. *The Inhabitants of Mile End Old Town*, 16 Law Jour. 184, M. C. Applying that principle to the present case, as the whole bridge contributes equally to produce the net rateable value, ascertained at 720*l.*, and there is an equal length of the bridge in each parish, the rateable value must be divided in equal moieties. On the mode by which the rateable value was obtained, and as to the rateability of the approaches, the Court gives no judgment. The order of the Sessions fixing the rate at 360*l.* was affirmed.

Court of Common Pleas.

Turner v. *Meryweather.* Feb. 9, 1849.

LIBEL.—POSTPONEMENT OF TRIAL.—INNUENDO.

The postponement of a cause is in the discretion of the presiding Judge.

Where the person libelled is uncertain, the name may be supplied by innuendo.

The defendant, a few days before the trial of this action for libels contained in a book

entitled, "An Extraordinary Case in the Ecclesiastical Court, by a Barrister-at-Law," applied to *Lord Denman*, C. J., for its postponement to the next assizes, on the ground of the absence of a material witness, who had been the medical attendant of the testator in the cause, of which the report was complained of, and who could give evidence as to the testator's state of mind when the codicil was executed. He also obtained an order from *Parke*, B., for a commission to examine the same witness as to all the facts, with the exception of those to which he had already deposed in the suit of *Turner* v. *Turner*, and which depositions, together with those of the solicitor who prepared the codicil, were directed to be used at the trial if the defendant were so advised. He did not, however, avail himself of that order, and Lord Denman having refused his application for postponement, the trial proceeded and the plaintiff obtained a verdict. A rule had been obtained, calling on the plaintiff to show cause why the verdict should not be set aside, or a new trial had, on the ground of such refusal; and why a *venire de novo* should not issue, as the damages were given generally, and as the seventh count in the declaration was bad, in alleging that the defendant published of and concerning the plaintiff, the words, "yet, in defiance of all the watching, there is strong reason for believing that a very considerable sum of money was transposed from Mr. Turner's name, in the books of the Bank of England, by power of attorney obtained from him by undue influence, after he became mentally incompetent to perform any act requiring reason and understanding."

Shee, S. L., Russell Gurney, and *Fish*, against the rule; *Pearson* and *Henniker*, in support.

The *Court* said, that the defendant had not applied to Lord Denman to postpone the trial for a few days, in order to avail himself of Baron Parke's order, under which full justice might have been done, but had applied for a postponement to the next assizes. The granting or refusing this application was a matter of discretion with the presiding judge, and the Court were of opinion that the application had been rightly refused. Then as to the question of a *venire de novo*, the present law now is, that where the person is uncertain, by innuendo it may be made certain, as was decided in *Solomon* v. *Lawson*, 8 Q. B. 823. That count had stated what was actionable, and an innuendo was averred that it was used of and concerning the plaintiff; the jury had so held. The rule *nisi* must, therefore, be discharged.

Court of Exchequer.

The Newry and Enniskillen Railway Company v. *Combe*. Feb. 17, 1849.

RAILWAY CALLS.—PLEA OF INFANCY.

An action for calls by a railway company, against an infant shareholder, who was one of the original subscribers, and had repudiated the contract during infancy, is not maintainable.

To an action by a company against a registered shareholder for the amount of a call, the defendant pleaded, that at the time he subscribed the deed of the company and contracted with them to take the shares in respect of which he was sued, he was an infant, and that afterwards, while he was an infant, he repudiated the contract, and gave notice thereof to the plaintiffs, and also that he would continue to hold the shares only in trust for them. To this plea the plaintiffs demurred, on the ground that the plea furnished no sufficient answer to the action, as the Railway Act, special and general, contemplated the case of an infant holding shares.

Petersdorff was heard in support of the demurrer, and *Peacock* for the defendant.

Parke, B. The acts of parliament which give a remedy by action for calls against registered shareholders, must be taken to refer only to those who are capable of becoming such by law—by means of a contract. They never could have been meant to include infants, who by law are incapable of making any contracts. There are cases, no doubt, in which infants may become the holders of shares without entering into any contract with the company, but those reasons do not apply to the case of an original subscriber, who contracted with the company in his own person. It was contended in the course of the argument, that the defendant ought to have shown by his plea, that he disaffirmed the contract *after* he came of age; and that he should have alleged he had not ratified the contract after he came of age. I think the disaffirmance need not be after an infant comes of age, nor need he allege that he has not ratified the contract, for those are matters which ought to appear from the replication; so also, if he has enjoyed the profits, that ought to be replied, and as for his not having done all in his power to disaffirm the contract, it is difficult to see what more he could do,—he could not go to the office and scratch out his name from the register. For these reasons, therefore, judgment must be for the defendant.

Rolfe and *Platt*, BB. concurred.

Judgment for the defendant.[a]

[a] In the subsequent case of *The Leeds and Thirsk Railway Company* v. *Fearnley*, (Feb. 20, 1849,) also an action for calls, where the defendant pleaded simply, that at the time of making the calls he was an infant, to which the plaintiff demurred; and upon the argument it was stated, that the Court of Queen's Bench, in a case of *The Cork and Bandon Railway* v. *Cazenove*, had decided that an infant was liable for calls as a registered shareholder, the Court of Exchequer deferred giving judgment, until they had ascertained what the exact state of the pleadings was in the case decided by the Queen's Bench. The question, whether an infant is liable therefore for railway calls, cannot yet be considered as settled.

Nisi Prius.

(*Coram* Denman, L. C. J.)

Barker v. *Collins.* Guildhall Sitting, Feb. 23, 1849.

LIABILITY OF PROVISIONAL COMMITTEEMAN.—AUTHORITY TO ADVERTISE COMPANY.

Held, *that the chairman at the first meeting of the managing committee was liable for advertisements generally, although he had not attended subsequently.*

In an action by an advertising agent, to recover 809*l.* from the defendant, as chairman of the managing committee of a projected railway company, called "The Direct London, Holyhead, and Pontypool Railway Company," it was proved that the defendant presided at a committee meeting in August, 1845, when a resolution was agreed to that the scheme should be advertised. Orders were afterwards given to the plaintiff by the secretary, and advertisements inserted in various newspapers to the amount claimed.

On the part of the defendant, it was contended, that the advertisements inserted pursuant to the resolution of the meeting at which the defendant acted as chairman only amounted to 47*l.*, and for that sum the defendant conceded he was liable; but, as he had not attended any subsequent meeting at which advertisements were directed to be inserted, he denied his liability for any further sum.

Lord *Denman* said, there was but one point for the decision of the jury, namely, whether the sanction of the defendant at the first meeting authorised the plaintiff to advertise to the extent he had done; and that if such were their opinion, the jury must return a verdict for the plaintiff, to the full amount; but if, on the contrary, they believed the defendant had authorised the insertion of a portion only of the advertisements, their verdict should be for 47*l.*, which was the amount the defendant had admitted.

The jury returned a verdict for 800*l.*, subject to an application to the Court to reduce the damages.

Willes for the plaintiff, and *Humfry* for the defendant.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF PROPERTY AND CONVEYANCING.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75.
Law of Costs, p. 35.
Law of Evidence, p. 56.
Law of Attorneys, p. 341.
Courts of Equity:
Law of Property and Conveyancing, p. 113.
Principles of Equity, pp. 134, 380.
Practice, p. 196.
Pleadings, p. 361.
Bankruptcy, p. 158.]

COVENANT.

Construction. — Policy of assurance. — A party covenanted "to do and perform all such acts, matters, and things, as should be requisite for continuing and keeping on foot a policy:" *Held*, that this covenant could not be read negatively, as if he had covenanted to do no act whereby it would become void, and, therefore, that the covenant was not broken by the suicide of the covenantor, whereby the policy became forfeited. *Dormay* v. *Borrodaile*, 10 Beav. 335.

DEED.

Construction.—Next of kin.—In a marriage settlement, the ultimate limitation of a fund provided by the husband, was "for his next of kin or personal representatives in a due course of administration, according to the Statute of Distributions." There was a similar limitation *mutatis mutandis* of the fund provided by the wife. The Court rejecting the claims of the husband's executors and of his residuary legatee, and excluding his widow: *Held*, that the next of kin were entitled to the fund provided by the husband. *Kilner* v. *Leech*, 10 Beav. 362.

DEVISE.

Fee. — Joint tenancy. — Devise to trustees and their heirs "upon trust for the use and benefit of" *A.*, *B.*, and *C.*, (without words of limitation). *Held*, that *A.*, *B.*, and *C.*, took in fee.

Devise to trustees in fee upon trust for the use and benefit of *A.*, *B.*; and *C.*, the rents to be paid for their maintenance and education, "or to the survivors or survivor of them, share and share alike:" *Held*, that they took equitable estates in fee as joint tenants. *Moore* v. *Cleghorn*, 10 Beav. 423.

HEIR.

1. *Discretionary power of trustee.*—A devise of all the testator's property in trust for his niece, subject to a discretionary power in the

trustees, on her attaining 21 or marrying, to settle the whole or such part as they should think fit upon her or her children, if she should have any, with remainder, in default of children, to her mother absolutely. The niece attained 21; but, before any settlement was made under the power, she died, without having been married: *Held*, that the power could not then be exercised, and that her heir was entitled to the whole of the real estate. *Lancashire* v. *Lancashire*, 2 Phill. 657.

2. *Gift of residue, after death of tenant for life.*—A testator directed his executors to set apart a sum of stock to answer an annuity of 600*l.*, to be paid to his daughter Anna Maria (who was then his only surviving child) for her life, and on her death to divide the principal among her children, if she should leave any, on their respectively attaining the age of 24; if no child, or none who should attain that age, to pay thereout two small legacies, "and all the rest and residue of the said principal fund he gave and bequeathed to and amongst his heirs-at-law, share and share alike:" and in a subsequent part of his will he appointed his said daughter by name his general residuary legatee: *Held*, nevertheless, that as sole heiress-at-law and next of kin of the testator at the time of his death, she, and not his heir-at-law or next of kin at the time of her death, was entitled, under the ultimate gift, to the fund set apart to answer the annuity. *Ware* v. *Rowland*, 2 Phill. 635.

Cases cited in the judgment: Holloway v. Holloway, 5 Ves. 399; Jones v. Colbeck, 8 Ves. 38; Miller v. Eaton, Sir G. Coop. 272.

3. "*Family.*"—Construction of the words "heirs" and "family," as applicable to dispositions of real and personal estate respectively. *White* v. *Briggs*, 2 Phill. 583.

LANDS' CLAUSES CONSOLIDATION ACT.

1. *Railway.—Deviation from deposited plan.—Public policy.*—By the "Railway Clauses' Consolidation Act," 8 & 9 Vict. c. 20, s. 16, if a railway crosses any turnpike road, then, except where otherwise provided for by the special act, the road is to be carried over the railway, or the railway over the road. By their special act, a company were authorised to make the railway "in the line and upon the lands delineated" in the plans deposited; and they were authorised to pass a certain turnpike road on a level, and the deposited plans so represented. The plaintiff agreed to sell to the company a portion of his land, adjoining the road, and the agreement recited, that it was purchased for the purpose of constructing the railway "according to a certain plan and section thereof deposited," &c.: *Held*, that the company, under the acts, had power to make the turnpike road pass *under* the railway instead of on a level, and that this right had not been destroyed by the agreement with the plaintiff. Whether a public company can contract itself out of the powers given it by the legislature for the public protection, *quære?* *Semble*, not. *Brayston* v. *London and North Western Railway Company*, 10 Beav. 233; 2 C. P. Coop. (temp. Cot.) 108.

2. *Power to take land.—Notice.*—A railway company is entitled, under the Lands' Clauses Consolidation Act, (8 Vict. c. 18,) to give a second notice to the same landowner for land within the limits to which their compulsory powers extend, if, from unforeseen circumstances, the land taken under the first notice turns out to be insufficient for the authorised purposes of their railway. *Stamps* v. *Birmingham and Stour Valley Rail. Co.*, 2 Phill. 673.

Cases cited in the judgment: Webb v. Manchester and Leeds Railway Company, 4 Myl. & Cr. 118; Simpson v. Lancaster and Carlisle Railway Company, 4 Rail. Ca. 625.

MARRIAGE SETTLEMENT.

Power.—Appointment.—Gift by implication.—By a marriage settlement, a fund was limited to the husband for life, with remainder to his wife absolutely if she survived; but if she predeceased him, then for all the children of the marriage, in such shares as she should appoint; and if there should be no issue of the marriage living at her death, upon trust as she should appoint generally, and, in default, to the husband absolutely; but there was no express gift to the children in default of appointment. The husband survived, and there were children living: *Held*, that such children, notwithstanding the mother never appointed, were entitled to the fund. *Fenwick* v. *Greenwell*, 10 Beav. 412.

See *Deed.*

MINES.

See *Vendor and Purchaser*, 1.

MORTGAGE.

Devisees of legal estate, 1 *Wm.* 4, *c.* 60.—*Trustee.*—The costs of the petition and order under the stat. 1 W. 4, c. 60, for the reconveyance of a mortgaged estate to the mortgagor, or his representatives, upon payment of the mortgage money, are to be borne by the mortgagor or his estate, although such proceedings were rendered necessary by the circumstance, that the mortgagee had devised the legal estate in the mortgaged premises to three trustees, one of whom could not be found. *King* v. *Smith*, *In re* 1 W. 4, c. 60, 6 Hare, 473.

Cases cited in the judgment: In re Townsend, 2 Ph. 348; In re Marrow, 1 Cr. & Ph. 142; 1 J. & W. 264.

POWER OF APPOINTMENT.

Construction of bequest.—Widow.—A testator, by his will, directed that all his property should be "at the disposal of his wife for herself and children."

Held, reversing the decision below, that there was no joint-tenancy between the widow and children; but that the widow, though not entitled to the property absolutely, had a personal interest in it; and, as between herself and her children, was either a trustee of the fund with a large discretion as to the application of it, or she had a power in favour of the children, sub-

ject to a life interest in herself. *Crockett* v. *Crockett*, 2 Phill. 553.

Cases cited in the judgment: De Witte v. De Witte, 11 Sim. 41; Beales v. Crisford, 13 Sim. 592; Morse v. Morse, 2 Sim. 485; Anon, Dalison, 58; Raikes v. Ward, 1 Hare, 445; Woods v. Woods, 1 Myl. & Cr. 401.

See *Devise; Marriage Settlement*.

POWER OF SALE.

Perpetuity.—Testator devised his estates to trustees, in trust for his brother's first and other sons, successively in fee; but so that the estate and interest of each of them should cease, in favour of his next brother, on his dying under 21, and without leaving issue living at his death; and if all of them should die under that age and without leaving issue living at their deaths, in trust for the person who should then be his heir, absolutely. And he empowered the trustees of his will for the time being, to sell the estates *at any time after his decease and at their sole discretion*.

Held, that this power of sale was valid. *Nelson* v. *Callow*, 15 Sim. 353.

PURCHASE.

Decree.—Sale of real estate to pay costs.—A purchaser under a decree is not to be relieved from his purchase, merely because there are irregularities in the decree, where there is no want of jurisdiction or parties.

Real estate was devised to and vested in trustees, in trust for certain persons, amongst whom were an infant and persons not *in esse*. In a suit for carrying the trusts into execution, the debts and legacies were paid out of the personal estate, before any provision was made for payment of the costs of suit. While there was personal estate remaining, and before the facts had been so ascertained as to make a sale of the real estate proper, a decree was made for the sale of the real estate for payment of the costs: *Held*, that, although the decree was not such as would have been pronounced on due consideration, and would have been varied upon a rehearing, yet a purchaser under it was not entitled to be discharged from his purchase, on the ground of irregularity, there being no want of jurisdiction or parties. *Baker* v. *Sowter*, 10 Beav. 343.

Cases cited in the judgment: Lloyd v. Johnes, 9 Ves. 37; Bennett v. Hamill, 2 Sch. & Lef. 566; Curtis v. Price, 12 Ves. 105.

RAILWAY COMPANY, POWERS OF.

See *Land Clauses*.

REAL AND PERSONAL ESTATE.

Accumulation.—Chattel interest.—A testator devised his real estate to trustees in fee to accumulate until the youngest child of A attained 21, and then to divide it. After the expiration of 21 years, and before the youngest child attained 21, the heir of the testator died: *Held*, that the forbidden accumulation subsequent to the heir's death, being in the nature of a chattel interest, passed to the personal representatives of the heir of the testator. *Sewell* v. *Denny*, 10 Beav. 315.

SETTLEMENT BY THE COURT.

Construction of will.—A testator directed that, upon the death of his wife, to whom he gave a life interest in all his property, both real and personal, his nephew, whom he named, should be heir to all his property not otherwise disposed of; but added that, as he had had little intercourse with his nephew, and was apprehensive that his habits might require some control, whatever portion of the property might be possessed by him was to be secured by the executors for the benefit of his family: *Held*, that the real estate was to be settled on the nephew for life, with remainder to his sons successively in tail male, with remainder to his daughters as tenants in common in fee; and the personal estate upon the nephew for life; with remainder to all his children as joint tenants, with a proviso that, in the event of all the children dying under 21, and daughters unmarried, or if sons, without issue, the personalty should be held in trust for the nephew absolutely. *White* v. *Briggs*, 2 Phill. 583.

Cases cited in the judgment: Chapman's Case, Dyer, 333; Counden v. Clarke, Hob. 29; Wright v. Atkins, G. Cooper, 122; Doe v. Smith, 5 M. & Sel. 126.

SETTLEMENT.

Accumulations.—A testator, after bequeathing to his daughter (a widow) an annuity, and directing his trustees to set apart a sufficient sum of stock to answer the growing payments, bequeathed his residuary personal estate to, and to be equally divided between, his grandson and granddaughter (by name) as tenants in common; but in case of the death of the granddaughter, under 21 and unmarried, in the lifetime of the grandson, or in case of the death of the grandson in the lifetime of the granddaughter, under 21, he bequeathed the whole to the survivor; and, after directing payment, during the minority of the grandchildren, for their maintenance, the testator directed that the clear surplus of the income of his residuary estate should accumulate in the hands of his executors, and be added to the principal of the share of his grandchildren in the residue, and directed that his grandchildren respectively should not be entitled to receive his or her share, or the accumulations, until after the death of their mother (the annuitant). The granddaughter married under age, and articles were executed on her marriage, whereby it was agreed, when she became entitled to the absolute and immediate possession of any part of the residuary estate, the same and all accumulations should be settled on certain trusts for the separate use of the wife for life, with subsequent trusts for the husband and children, and a proviso referring to, and dependent on, the trust for accumulation in the will. On a bill filed by the granddaughter, during her mother's lifetime, for a transfer of the fund: *Held*, that the direction to accumulate in the will was precarious and ineffectual, and was not rendered otherwise by the settle-

ment; and that the granddaughter's moiety became capital at her marriage; and that the accumulations since that period belonged to her for her separate use. *Swaffield* v. *Orton*, 1 De G. & S. 326.

SPECIFIC PERFORMANCE.

Mistake.—Revocation of authority to sell.—Parol evidence.—Premises were advertised to be sold according to certain printed particulars and conditions of sale. Before the sale took place, several of the printed copies were altered by the vendor's solicitor, who introduced, in writing, a reservation of a right of way to other premises belonging to the vendor. Several of the altered copies of the particulars were laid on the table in the auction room, without any remark with regard to the alteration, and an altered copy was delivered to the auctioneer, who read the same aloud before the biddings commenced; but the party who became the purchaser did not hear or notice the alteration. The contract was signed by the auctioneer (inadvertently), and by the purchaser, on a copy of the particulars of sale not containing the reservation. After the purchase-money was paid and possession given, the purchaser filed his bill for specific performance of the contract by a conveyance from the vendor, without a reservation of the right of way; and the bill was dismissed with costs.

An authority given to an auctioneer to sell may be revoked by the vendor at any time before the sale, and such revocation is valid against parties dealing without knowledge of it; therefore, in a suit by a purchaser to enforce specific performance of a contract entered into by the auctioneer by mistake or inadvertence, for the sale of property, as to part of which—a right of way over the land sold—his authority had been revoked, it is competent to the defendant to insist upon such revocation, and parol evidence is admissible in support of that defence. *Manser* v. *Back*, 6 Hare, 443.

Cases cited in the judgment: Jenkinson v. Pepys, 15 Ves. 521; 1 Ves. & B. 528; Higginson v. Clowes, 15 Ves. 516; Marquis of Townshend v. Stangroom, 6 Ves. 328, 331; Calverly v. Williams, 1 Ves., jun. 201; Clowes v. Higginson, 1 V. & B. 524; Neap v. Abbott, C. P. Cooper, 333.

TRUSTEE.

Execution of discretionary power by a retired trustee.—A trustee of a will, who had formally renounced that character by a deed which purported (but ineffectually) to appoint a successor, being applied to 11 years afterwards to join with his original co-trustee in a deed purporting to be an exercise of a discretionary power which could only be exercised by the two trustees of the will for the time being, refused to do so, without an indemnity, but ultimately, on being indemnified, executed the deed: *Held*, that he could not resume his position as trustee for such purpose, and that, even if he could, his execution of the deed, under the circumstances stated, could be regarded only as a formal act, and not as an exercise of that discretion which was essential to a due execution of such a power.

If the nature of the case be such as to render costs a matter of discretion with the Court, the mere circumstance that they form part of the relief specifically prayed by the bill does not make them a substantive matter of appeal from the decree. *Lancashire* v. *Lancashire*, 2 Phill. 657.

See *Heir*, 1; *Mortgage*; *Vendor and Purchaser*, 3.

VENDOR AND PURCHASER.

1. *Shares in mines.—Title.*—The purchaser of shares in a mining company is not entitled to a regular abstract of title to the mines themselves as if he were purchasing a share in the land in which they are worked; but he is entitled to such evidence of the constitution of the company and of the nature of the title under which the mines are worked, as will show that the subject-matter of the purchase is what it professes to be, and that the proposed form of transfer to him will give him a valid title to the shares.

Where, on a reference as to title, the Master has reported in favour of the title, but, upon exceptions, the Court thinks he has done so erroneously or on insufficient grounds, the course is to give the respondent the option of a reference back to the Master to review his report. *Curling* v. *Flight*, 2 Phill. 613.

2. *Vendor claiming under suspicious will, required to establish it.*—In a suit for specific performance by a vendor whose title was derived under a suspicious will, it appearing that the heir had failed in an action of ejectment, and afterwards, on a motion for a new trial, the Master reported in favour of the title, and the Vice-Chancellor confirmed the report, and decreed specific performance without requiring the plaintiff to establish the will. But the Lord Chancellor, on appeal, reversed the decision, holding that it was more consonant to the principles of this Court that the validity of the will in such a case should be conclusively determined, if possible, between the vendor and the heir, than that it should be left to be litigated between the heir and the purchaser after the purchase-money should have been paid. *Grove* v. *Bastard*, 2 Phill. 619.

3. *A deceased vendor declared a trustee.*—A vendor, who dies before the completion of the contract, is a trustee within the meaning of the 4 & 5 W. 4, c. 23, though expressly excepted out of the 1 W. 4, c. 60. *In re Lowe's estate: In re the* 1 *W.* 4, *c.* 60, *and* 4 *&* 5 *W.* 4, *c.* 23, 2 Phill. 690.

4. *Contract made by means of letters.—When vendor bound.*—A purchaser offered a price for an estate, and the vendor, by a letter sent by post, received by the purchaser the day after it was put into the post-office, accepted the offer: *Held*, that the vendor was bound by the contract from the time when he posted the letter, although it was not received by the purchaser until the following day. *Potter* v. *Sanders*, 6 Hare, 1.

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SATURDAY, MARCH 24, 1849.

——"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

APPOINTMENT OF QUEEN'S COUNSEL.—THE BAR AND THE CHANCELLOR.

We have often had occasion to notice and lament, the peculiarly anomalous condition in which the members of the Bar, in this kingdom, are placed. Entering upon the practice of a profession, the exercise of which demands no ordinary share of learning, discretion, and judgment—without any prescribed course of education or study, or any previous test of qualification or character—upon the fiat of the self-elected rulers of certain voluntary societies, the barrister pursues his honourable and useful avocation, untrammelled by legislative interference, and in subordination to nothing but the practice of the Courts and the opinion of his professional brethren.

There is no written code of regulations for his guidance, but he is expected to act—and if he be a man of honour and proper feeling uniformly does act—in strict accordance with, and in deference to, what he understands to be the usage of that branch of the profession to which he belongs. If he aspire to what are called "the honours of the profession," that is to say—the rank of Queen's Counsel, or the degree of a Serjeant—distinctions in his case not merely honorary, but it may be materially affecting his fortune and prospects—he finds they can only be obtained by matter of grace and favour, and in no case as of right. The silk gown may be conferred upon a barrister without learning, reputation, or business, or it may be withheld from a barrister of acknowledged ability, extensive experience, and unquestionable worth! No individual can command the appointment, or be assured that his claims to it will be admitted, and yet it is the invariable custom, we believe, for those who desire the elevation to solicit it.

That a system so essentially unsatisfactory, and objectionable, and withal so liable to abuse, should have existed with the acquiescence, if not the approbation, of the public and the profession for a long series of years, proves indisputably, that the power with which the Benchers of the Inns of Court and the Lord Chancellor are respectively invested, has been generally exercised judiciously, liberally, and with a becoming regard for public opinion.

The Common Law Judges are visitors of the Inns of Court, and in that capacity exercise some degree of authority and control over the Benchers upon their refusal to call a student to the Bar; but as regards the distribution of professional honours, the Lord Chancellor is responsible only to his own conscience and to public opinion. It cannot be wondered at, therefore, if those who consider themselves slighted or aggrieved in a matter involving so much personal feeling should give expression to their complaints and disappointments in no very measured terms; and certain it is that the course pursued by the Lord Chancellor, on a recent occasion, has given rise to many murmurs and much discontent, not alto-

gether confined to the disappointed candidates and their immediate friends. It is notorious, that the half-dozen gentlemen who found favour in Lord Cottenham's sight, shortly before the commencement of the Circuits now in progress, comprised a very small proportion of those who were ambitious of walking in silk attire. Several members of the Equity Bar, whose names are not to be found in the list of recent promotions, had applied to be made Queen's Counsel, and two or three candidates for the honour, presented themselves from each of the circuits.

As regarded some of the circuits, it was suggested that recent occurrences rendered the appointment desirable and convenient for the dispatch of business. On the Northern Circuit, for instance, it was considered that a vacancy had been created in consequence of the appointment of Mr. Baines to the office of President of the Poor Law Commission. The Norfolk Circuit has been some time without the regular attendance of a second Queen's Counsel, and we believe the same may be said of the Welsh Circuits. From all these circuits, as well as from the Midland and Home Circuits, applications were made to the Chancellor for silk gowns, by gentlemen, who, from their standing and position on their respective circuits, had some apparent claim to the distinction to which they aspired. His Lordship, however, turned a deaf ear to these applications, and contented himself with selecting from the numerous list of candidates, a single member of the Western and one belonging to the Oxford Circuit,—circuits, by the way, on which no recent changes had occurred to occasion any diminution in the number of Queen's Counsel. Whether the Chancellor's refusal further to extend the number of her Majesty's Counsel, has arisen from a consideration that the number is already sufficient, and that the interests of the public will be more benefited by preventing the increase of leaders in the Common Law Courts, or from any other consideration, we cannot take upon ourselves to suggest.

Our impression certainly is, that every member of the Bar of a certain standing and of unblemished character, who desires to take rank as a Queen's Counsel, should be permitted to do so. If this step be uncalled for, from the state of the profession, or injurious as regards the applicant himself, he is the only sufferer by the mistake; and in this as in other cases, it may be safely left to men to adopt the course they deem most for their own advantage, where its adoption cannot be attended with injury to others. Be this as as it may, the Lord Chancellor's rejection of the applications recently made to him by certain members of the Common Law Bar, has produced much general observation and created great disappointment and individual dissatisfaction. Indeed, we have heard of an instance in which one of the applicants — a barrister of considerable standing and deservedly respected,—has evinced his sense of annoyance at the manner in which his claims have been overlooked, by intimating his intention of retiring altogether from the profession. This may be deemed a precipitate resolution, and undoubtedly furnishes an example not likely to find many imitators at the Bar, but it shows how heavily disappointments of this description may weigh on a mind peculiarly constituted, and suggests some doubts as to the expediency of maintaining a system which produces such results.

THE TRUSTEE BILL, 1849.

To the Editor of the Legal Observer.

Sir,—In these days of senseless clamour against the legal profession, when every *dilettante* legislator, who can suggest a mode of cutting down the legitimate profits of lawyers, considers he has established a title to the character of a law-maker, it may seem presumptious in one of the proscribed to attempt to stem the torrent of prejudice which it has been so much the fashion of late to encourage and assist; but as every deep-thinking and right-minded man must be convinced, that the respectability of the legal profession and the welfare of the public are inseparably connected, I am willing, in order to prevent as far as I can the sacrifice of the one, and irreparable injury of the other, to expose myself to the charge of rashness, or any imputation that the new school of universal philanthropy may invent.

I have been induced to inflict upon you these observations and this letter, in consequence of having read in the *Legal Observer* of Saturday last, the proposed new Trustee Act, and to the provisions of which, the attention of your readers should be directed.

It was formerly the practice, when legislation was really looked upon as a science, for the promoters of new measures to show from experience the imperfect, or defective working of established laws before they attempted to repeal or alter them; nor was

this the only requisite for a new and important statute, for parliament expected that not only the alleged defects but the proposed alterations should have been warranted by something like judicial sanction before they were brought under consideration. Let us see how little this practice has been adhered to in the concoction of the new Trustee Act. The statutes which are to be materially altered by the proposed new act, are three of those that were prepared by, and were passed under the auspices of the late Lord Chancellor for Ireland, Sir Edward Sugden, indisputably the most eminent conveyancer of the day. It need scarcely be stated that "Sir Edward Sugden's Acts," by which title the act just alluded to, and the other acts introduced by that eminent lawyer into parliament, are commonly known, were the result of many years' experience, both in and out of Court, and the operation of them has proved highly beneficial and satisfactory. Whether equal wisdom and experience can be claimed for the authors of the proposed new acts, with those universally acknowledged to be possessed by the distinguished lawyer, who was the author of "Sugden's Acts," I will not pretend to say; but I should be surprised to hear that any judicial authority could be produced to show such a defective working of the latter acts, as to render the new act in any way necessary or justifiable.

What, then, it may be asked, is the professed virtue of the proposed new act? This is undoubtedly a difficult question; but its main object, and with a certain portion of the public a very taking one, is, to save a few fees which now find their way into the pockets of the lawyers, but which, by the operation of the new act, it is supposed will be saved. Sir Edward Sugden, while he afforded relief by his acts for cases where absence, or incapacity, might prove an impediment to the administration of justice, provided at the same time a safeguard for those whose rights were to be conveyed away without their personal knowledge, by requiring a formal deed to be executed, which, according to the forms of the Court, must receive the sanction and approval of a responsible officer of the Court. The proposed new act treats this as an idle formality, and makes the order of the Court a sufficient vesting of the estate without any deed whatever.

Now, when it is considered how easily orders are obtained, where all parties consent, and that in the cases contemplated by the act, the only parties to dissent would be those who are not represented before the Court, and when it is borne in mind, that in the present state of the law the conveyance to be executed under Sir Edward Sudgen's Acts, is not only settled and approved by the Master, but in important cases is also settled by counsel, even sanguine reformers may well doubt whether the slight saving of expense in the first instance will not be dearly purchased by the constant risk of injustice to which innocent parties may be exposed, and whether the expense of rectifying erroneous and improper orders will not greatly exceed that which may have been saved.

CAUTUS.

TAXATION OF SUITORS IN CHANCERY.

IN our paper of the 10th March, we noticed the re-appointment of the Solicitor-General's Committee of the last Session, to inquire into the Taxation of Suitors by the Collection of Fees and the Amount thereof, and the appropriation of Fees, and into the Salaries and Fees received by the officers of the Court. Upon this Committee, besides the Solicitor-General, there are five other barristers practising in the Court, Mr. George Turner, Mr. Page Wood, Mr. Walpole, Mr. Roundell Palmer, and Mr. Headlam.

On the 8th of May, 1848, the Committee reported to the House twenty-three resolutions, relating principally to the mode of collecting the fees,[a] and it appears from the Vote Paper, that at the end of last Session, the Committee met to consider a report, but which was not promulgated. The Committee has not yet met since its reappointment in the present Session.

Elsewhere we have fully noticed the Accountant-General's Account. The stock standing to the credit of the suitors has now increased by constant accumulation to 3,525,744*l.* 10*s.* 9*d.* Consols,—the surplus interest invested during the year being 40,000*l.* The amount of fees levied on the suitors during the year was 146,579 8*s.* 2*d.*, being an excess above the charges paid out of them of 8,585*l.* 16*s.* 10*d.*

We have already in this journal adverted to the opinion given in Parliament by the present Lord Chancellor, previously to his last return to office, that the time

[a] See 36 L. O. 45.

had arrived at which it was necessary that the suitors should be relieved from some of the charges imposed by Acts of Parliament upon them, and as no relief is to be expected from the Consolidated Fund, we recommended that *part of the stock*, say one half million of the three and a-half millions stock standing to the credit of the suitors, should *be applied in redemption of the compensations* awarded to the Six Clerks, Sworn Clerks, and others, late officers of the Six Clerks' Office. Or, at all events, that the 40,000*l.* a-year, *surplus dividends*, should, instead of being accumulated, be applied in payment of the compensations now amounting, according to the Accountant-General's account, to 40,414*l.* 3*s.* 4*d.* a-year.

The salaries and expenses created under the same act, amounting, according to the same account, to 34,059*l.* 5*s.* 9*d.* a-year, are surely a sufficient charge to be levied on the suitors by fees.

We think also, that the suitors should be relieved from payment of the salaries of the Lord Chancellor and two Vice-Chancellors, and we are exceedingly anxious to see how those several subjects of inquiry before the Committee will be dealt with in their report, for which we have been long so anxiously looking, and from which so much is expected by the profession, on account of the rank and opportunities of judging of so many of those upon the Committee. Something should be done to relieve the suitors from the pressure of the fees. The three Vice-Chancellors' Courts have, within the last week, at different times, been closed for lack of business, and the complaints of the practice of the Masters' offices are louder than ever, and the business of the Court seems likely in future to be confined to such business only as the ingenuity of the profession cannot possibly bring to a solution beyond or out of its portals.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

BUCKINGHAM ASSIZES, 12 VICT. C. 6.

An Act to repeal an Act of the Twenty-first Year of George the Second, for holding the Summer Assizes at Buckingham; and to authorize the Appointment of a more convenient Place for holding the same.

[9th March, 1849.]

1. *Provisions of the first-recited act requiring the Summer Assizes to be held in the town of Buckingham repealed.*—Whereas by 21 G. 2, c. 12, intituled "An Act for holding the Summer Assizes for the County of Buckingham at the County Town of Buckingham," it was enacted, that from and after 1st June, 1748, all the Commissions of Assize and Nisi Prius, and all General Commissions of Oyer and Terminer, and all Commissions of General Gaol Delivery, which should thereafter be appointed to be held and executed for the said county next after the Term of Holy Trinity, should be held and executed in each year at and in the said town of Buckingham, and at no other place within the said county of Buckingham, any law, statute, usage, matter, or thing to the contrary notwithstanding: And whereas by 3 & 4 W. 4, c. 71, intituled "An Act for the Appointment of convenient Places for the holding of Assizes in England and Wales," after reciting that the places at which the assizes were then held in various counties in England and Wales were inconvenient to the inhabitants thereof, and that it would conduce to the more cheap, speedy, and effectual administration of justice to appoint other places instead thereof for the holding of assizes, it was, amongst other things, declared and enacted, that his Majesty, by and with the advice of his most honourable Privy Council, should have power from time to time to order and direct at what place or places in any county in England or Wales the Assizes and Sessions under the Commissions of Gaol Delivery, and other Commissions for the despatch of civil and criminal business, should be holden: And whereas since the passing of the first above-recited Act up to the present time the Summer Assizes for the said county have been regularly held in the town of Buckingham: And whereas the holding of the said assizes at the said town is inconvenient to the inhabitants of the said county at large, and it would conduce to the more cheap, speedy, and effectual administration of justice if some other place or places were appointed for the holding of the said assizes, but by reason of the said first above-recited act that object cannot be effected under the provisions of the secondly above-recited act: It is, therefore, enacted,

1. That so much of the said first above-mentioned act as is herein-before recited shall be and the same is hereby repealed.

2. *Provisions of secondly recited act extended to the county of Buckingham.*—That all the powers and provisions of the said act passed in the Session of Parliament holden in the third and fourth years of the reign of his late Majesty King William the Fourth shall extend and apply to the said county of Buckingham, and every place therein, any law, statute, matter, or thing to the contrary notwithstanding.

INCLOSURE OF COMMONS.

12 VICT. C. 7.

An Act to authorize the Inclosure of certain Lands, in pursuance of the Fourth Annual General Report of the Inclosure Commis-

sioners for England and Wales. [March 9, 1849.]

1. *Inclosures mentioned in schedule may be proceeded with.*—Whereas the Inclosure Commissioners for England and Wales have, in pursuance of the 8 & 9 Vict. c. 118, intituled "An Act to facilitate the Inclosure and Improvement of Commons and Lands held in common, the Exchange of Lands, and the Division of intermixed Lands; to provide Remedies for defective or incomplete executions, and for the Non-execution of the powers of general and local Inclosure Acts; and to provide for the Revival of such Powers in certain Cases," issued provisional orders for and concerning the several proposed inclosures mentioned in the schedule to this act, and have, in the annual general report of their proceedings, certified their opinion that such inclosures would be expedient; but the same cannot be proceeded with without the authority of parliament; Be it enacted, That the said several proposed inclosures mentioned in the schedule to this act be proceeded with.

2. *Short title.*—That in citing this act in other acts of parliament, and in legal instruments, it shall be sufficient to use the expression "The Annual Inclosure Act, 1849."

THE SCHEDULE TO WHICH THIS ACT REFERS.

INCLOSURE.	COUNTY.	DATE OF PROVISIONAL ORDER.
Langwathby Moor	Cumberland	26th January, 1846.
Pyrton	Oxford	24th January, 1848.
Chorley Green	Chester	11th May, 1848.
Bell, Swan, and Silverlace Greens	Suffolk	29th July, 1848.
Bickerton Hills	Chester	5th August, 1848.
Bramerton Common	Norfork	18th September, 1848.
Headley	Southampton	18th September, 1848.
Oakworth Common	York	18th September, 1848.
Buckland Newton	Dorset	18th September, 1848.
Abbots Wood	Southampton	4th October, 1848.
Black Torrington	Devon	4th October, 1848.
Westwell Leacon	Kent	4th October, 1848.
Holster Yard	Devon	4th October, 1848.
Cowley Open Fields, The Marsh, Bullingdon Green, and Elder Stubbs	Oxford	31st October, 1848.
Cradley	Hereford	16th November, 1848.
Oatlands, Botley, and Osney	Oxford	16th November, 1848.
Firbank Fells	Westmoreland	5th January, 1849.
Orton	Nottingham	5th January, 1849.
Dent	York, W. R.	5th January, 1849.
Mansfield Woodhouse Forest	Nottingham	5th January, 1849.
Cadishead Moss	Lancaster	5th January, 1849.
Cefn Ertham Common	Brecknock	29th January, 1849.

FEES IN THE COURT OF CHANCERY.

THE Annual Account of the Accountant-General has just been printed. The following are the payments out of the *Suitors' Fund* for Salaries and Compensations from 2nd Oct. 1847, to 1st Oct. 1848:—

	£	s.	d.
To the Judges, 19,416*l.* 12*s.* 11*d.*, viz.:			
Lord Chancellor's salary	9,708	6	8
Vice-Chancellor Bruce	4,854	3	4
Vice-Chancellor Wigram	4,854	3	4
To the Masters 24,307*l.* 18*s.* 4*d.*, viz.:			
Ten Masters' salaries, at 2,500*l.* per annum	23,057	5	10
Accountant-General's salary as Master	582	10	0
Pension to a retired Master of 1,200*l.* per annum	728	2	6
For the Accountant-General's Office, 8,378*l.* 5*s.* 10*d.*			
Accountant-General's salary	873	15	0
Expenses of office, office-keeper, rates, stationery, &c.	436	17	8
Twenty-six Clerks' salaries	6,630	15	10
Pension to a retired Clerk of 450*l.* per annum	436	17	4

	£	s.	d.
To the Examiners, 873*l.* 15*s.*			
Two Examiners' salaries (in part), remainder being charged on Suitors' Fee Fund	582	10	0
Retired Examiner's Pension	194	3	4
Retired Examiner's Clerk's Pension	97	1	8
To the Four Clerks in the Clerks of Entries' office	333	19	9
To the Officers of the Courts, 3,305*l.* 0*s.* 1*d.*			
Officers of the Lord Chancellor's Court:			
Usher	291	5	0
Court-keeper	87	7	8
Persons to keep order	116	10	0
Tipstaff	110	1	6
Serjeant-at-Arms	602	15	11
Officers of the Vice-Chancellor of England:			
Secretary	485	8	4
Usher	194	3	4
Trainbearer	97	1	8
Officers of the Vice-Chancellor Bruce:			
Secretary	291	5	0
Usher	194	3	4
Trainbearer	97	1	8
Court-keepers	77	13	4
Officers of the Vice-Chancellor Wigram:			
Secretary	291	5	0
Usher	194	3	4
Trainbearer	97	1	8
Courtkeepers	77	13	4
Surveyor	33	16	8
Compensation to late Officers of the Court of Exchequer	5,038	17	10
Solicitors to the Suitors, in lieu of Costs	600	0	0
Disbursements	22	4	4
Expenses of Courts, Registrars' offices, Masters' offices, Report and other offices for repairs, rates, stationery, coals, candles, servants' wages, &c.	4,303	11	1
Costs of Contempt under Sir Edward Sugden's Act	26	0	7
Total Payments	66,755	2	10
Surplus Interest invested	40,000	0	0
	£106,755	2	10

The Payments from the *Suitors' Fee Fund* are as follow:

	£	s.	d.
To the Masters, 15,424*l.* 3*s.* 10*d.*, viz.:			
Compensation to four Masters, at 725*l.* per annum, with a proportion to one since resigned	3,081	5	0
Ten Masters' Chief Clerks, salaries at 1,000*l.* each, with a proportionate part accrued between the death of one and the appointment of another, and a proportionate part due to one at the abolition of Office	1,590	17	11
Sum received in error by one of the Masters' Clerks repaid by Order of Court	58	11	0
To the Registrars, 26,892*l.* 5*s.* 11*d.*, viz.:			
Salaries of Ten Registrars	15,900	0	0
Compensation to ditto, under 3 & 4 W. 4, c. 94, s. 48, and 5 Vict. c. 5, s. 63	4,000	0	0
Salaries to fourteen Registrars' Clerks, less a proportionate part accrued between the death of one and the appointment of another	6,719	5	11
Pension to a retired Registrar's Agent, under 3 & 4 Will. 4, c. 94, s. 48	273	0	0
For the Report Office, 6,166*l.* 16*s.* 11*d.*, viz.:			
Master of Reports and Entries' salary	1,000	0	0
Proportion due to late Clerk of Reports, deceased	16	16	11
Two Clerks of Entries	250	0	0
Compensation to one Clerk of Entries	100	0	0

	£	s.	d.
Salaries to Clerks of Accounts	2,550	0	0
Pension to late Master of Reports	2,250	0	0
To the Examiners, 2,100*l.* viz.:			
Part of Examiners' salaries to two Examiners, at 700*l.* per an.	1,400	0	
Compensation to one Examiner, under 3 & 4 W. 4, c. 94	200	0	0
Salaries to Examiners' Two Clerks, at 150*l.* per annum	300	0	0
Compensation to one ditto	200	0	0
To the Clerks of Affidavits, 2,608*l.* 0*s.* 4*d.*			
Proportion of three Clerks of Affidavits' salaries, under Act 10 & 11 Vict. c. 97	2,608	0	4
For Salaries and Compensations in Lunacy, 10,270*l.* 4*s.* 3*d.*			
Salaries, &c., under 5 & 6 of her present Majesty, c. 84:			
Two Masters in Lunacy	4,000	0	0
Travelling expenses	657	1	6
Five Clerks to Masters in Lunacy, less a proportionate part accrued between the death of one and the appointment of another	1,969	8	3
Rent of Premises	330	0	0
Expenses of Office	637	0	10
Salary of Secretary of Lunatics	800	0	0
Four Clerks in Secretary's Office	710	0	0
Expenses of office	450	13	8
Compensation to late Commissioners in Lunacy	480	0	0
Ditto to late Clerk of the Custodies	236	0	0
For Taxing Master, Clerks of Records and Writs and Enrolments, 34,059*l.* 5*s.* 9*d.*, viz.:			
Salaries, &c., under Act 5 & 6 of her present Majesty, c. 103:			
Six Taxing Masters	11,923	18	3
Six Clerks to ditto	1,490	9	9
Clerk of Enrolments	1,200	0	0
Three Clerks to ditto	750	0	0
Four Clerks of Records	4,800	0	0
Twelve Clerks to ditto	3,000	0	0
Copy Money for writing and copying in the office of the Taxing Masters, Clerk of Enrolments, and Clerks of Records	8,559	15	6
Rent of Taxing Masters' Offices	800	0	0
Expenses of Taxing Masters, Enrolment, and Record and Writ Clerks' for stationery, coals, candles, servants' wages, rates and taxes, and for furniture, &c.	1,535	2	3
Compensation for loss of Offices and Profits to the undermentioned Officers, under 5 & 6 Vict. c. 103, 40,414*l.* 3*s.* 4*d.*			
Three Six Clerks	4,733	15	0
Twenty-two Sworn Clerks	29,806	2	4
One Waiting Clerk	109	8	8
Four Agents to Sworn Clerks, with a proportion to one	1,144	9	3
Two Clerks of Enrolments	822	10	0
Two Deputy Clerks of Enrolments, Deputy Record Keeper, and Agent to Sworn Clerk	2,285	8	4
Sixpenny Writ Duty Receiver	9	15	10
Bag Bearer	42	16	0
Chaff Wax	19	16	8
Sealer	17	14	0
Late Clerk in the Public Office	180	2	3
Ten Masters' Junior Clerks (under the above two Acts)	1,229	12	0
Messenger	12	12	0
Excess of Fees above charges for the year ending 25th Nov. 1848	8,585	16	10
Total from Fee Fund	146,570	8	2
Suitors' Fund, exclusive of £40,000 surplus interest invested	66,755	2	10
	213,325	11	0
Deduct excess of Fees above Charges	8,585	16	10
Actual Expenditure in the Administration of Justice in Chancery	204,739	14	2

	£	s.	d.
The RECEIPTS from Fees are as follow:			
Fees received in the Masters' Offices	39,396	19	7
" " Registrars' Offices	18,231	1	6
" " Report Office	4,057	11	0
" " Affidavit Office	10,178	0	3
" " Examiners' Office	1,351	14	1
Fees received at the Subpœna Office	146	12	0
Fees formerly payable to the Lord Chancellor	1,617	9	9
Fees received by the Lord Chancellor's Secretary, and paid into Court by order of the Lord Chancellor	3,242	5	3
Fees received by Secretary of Lunatics	3,262	10	2
" " Clerk to Masters in Lunacy	3,198	14	8
" " Taxing Masters	31,781	0	0
" " Clerk of Enrolments	6,809	11	2
" " Record and Writ Clerks	23,239	12	9
Interest Money brought over from the Account of Sale of Six Clerks' Office	66	6	0
	£146,579	8	2

ATTORNEYS' CERTIFICATE DUTY.

THE petition of the attorneys and solicitors practising at Bromyard, in the County of Hereford, for the repeal of this tax, contains some statements not in other petitions, and which deserve notice.

After stating the various duties on articles of clerkship, admission, and certificates, the petition proceeds thus:

"That these taxes are extremely burdensome in amount, and unequal in principle; that they are a grievance both to the class upon which they are immediately imposed, and through them to the public at large.

"That the branch of the legal profession to which the petitioners belong, is not exempted from any taxes to which the rest of their fellow-subjects are liable, and that theirs is the only case in which British subjects, following a lawful and honourable calling, are prohibited by Act of Parliament from placing their own estimate upon the exertion of their talents and industry, but are restricted to one scale of charges, that does not vary, however much the value of all necessary articles of consumption may increase.

"That the Certificate Duty, from which the higher branch of the legal profession is exempt, is equivalent to a tax of 4*l.* per cent. upon the average incomes of attorneys and solicitors. The effect of it is, therefore, that they are compelled to pay an income tax of 7*l.* per cent. while the rest of their fellow-subjects pay 3*l.* per cent. only.

"The petitioners submit, that according to every principle of fairness or justice in taxation, if it is expedient in any one case to impose a tax upon the talent and energy of persons engaged in a lawful and honourable business, such a tax ought to be raised by an equal assessment upon every branch of industry.

"That considering the extensive nature and the immense importance of the business necessarily intrusted to attorneys and solicitors by every branch of the community, it is manifestly for the interest of the public at large, that, while on the one hand all the present precautions to secure, as far as possible, a due qualification in point of acquirement and character in those admitted to the profession should be strictly enforced; that on the other no unnecessary obstacle or difficulty should be allowed to impede or obstruct individuals anxious to devote their time and energies to a business of so much public necessity, utility, and importance."

YORKSHIRE LAW SOCIETY.

A GENERAL Meeting of this Society was held at York, on Friday the 9th instant, and was very numerously attended. Amongst others there were present—John Hope Shaw, Esq., the Mayor of Leeds, Thomas Thompson, Esq., Town Clerk of Hull, Thomas B. Mason, Esq., Town Clerk of Doncaster, Thomas Badger, Esq., Coroner of the West Riding, Benjamin Dixon, Esq., Deputy Clerk of the Peace of the West Riding, Messrs. Brook, Gray, Seymour, Hodgson, Leeman, Gold, Clark, Gutch, Newton, Breary, and Holtby, of York; A. Holmes, Esq., Pocklington; Messrs. Weddall, Newstead, and Parker, of Selby; Thos. Shepherd, Esq., of Beverley; G. Higham, Esq., Brighouse; B. B. Thompson, Esq., Tadcaster; J. F. Spurr, Esq., of Scarborough, &c., &c.

After the meeting, the members of the Society dined together at Lockwood's Hotel.

The *Mayor of Leeds*, the President of the Society, took the chair, and after the usual toasts of "The Queen," "Prince Albert," and "The Royal Family," "The Judges," &c., had been given, he rose to propose, "Success to the Yorkshire Law Society." He said—

Amongst the measures of the Session which will claim the attention of the Society, is the

revived proposal of a Metropolitan Registry. I do not allude to the shapeless mass of absurdities which passes under the name of Mr. Drummond's Bill, and which it would be a waste of our time and strength seriously to discuss. When the report of the Commission, some time ago appointed to consider the question of Registry, makes its appearance, and I think not till then, that question will assume a form entitling it to grave consideration; and when that time comes, I hope the profession will deal with it in the same spirit of candour and firmness in which they dealt with a similar question 12 or 14 years ago; that they will neither be goaded into opposition to a good measure by resentment at unfounded attacks upon themselves, nor be deterred from the free and open censure of a bad measure by the fear of abuse from any quarter. I trust that we shall calmly and dispassionately weigh the merits and demerits of whatever scheme may be proposed; and as calmly and dispassionately, but quite fearlessly, state to the public the result of our deliberations. With that public statement, our duty as a body of professional men will close, and if our opinions be disregarded, we shall not be answerable for the consequences.

In the meantime we may amuse, though perhaps not much instruct, ourselves with a new and important discovery;—new, most assuredly to the veterans, as well as the neophytes of our profession, and as our American brethren say, when they have something very marvellous to relate, "important if true." Mr. Drummond has discovered, that the gentlemen of this country are "solicitor-ridden." So that while we have been year after year complaining that the legislation of the country has been carried on with little or no regard to our feelings, interests, or opinions, and not unfrequently in a spirit of direct hostility to us, it would seem that we have all the while, without knowing it, been riding upon the backs or on the necks of the legislators! I am sure, if we have, that we have not held the bridle or the reins. It has been the ride of "Mazeppa." The horse, instead of the rider, has chosen the course, and has plunged both his rider and himself into a quagmire of difficulties. But though we neither do nor ought to possess that overwhelming influence which this gentleman's exuberant imagination ascribes to us, we certainly do, (or I should rather say, by cordial union amongst ourselves, we might,) possess an influence which, rightly and judiciously directed, would have prevented and may yet redress many of the grievances of which we complain; but our influence neither is nor possibly can be anything more than the legitimate influence of truth and justice, guided and assisted by professional knowledge and experience; and such an influence is as beneficial to the public as to ourselves. Mr. Shaw concluded with proposing the toast before-mentioned.

Many other toasts were given during the evening, the party not separating till a late hour. Amongst them were, "Mr. Brook, the Senior Member," "Mr. Gray, the Vice-President," "Mr. Thomas Hodgson, the Secretary of the Society," and "Mr. Mullings," the member who delivered so well-informed and practical a speech in the House of Commons on the subject of Mr. Drummond's Bill. All the speakers agreed in stating that the proposed alteration in the system of conveyancing, by requiring a registration of deeds in London, would materially increase the cost, and in no-wise injure the profession; the public alone would be the sufferers.

CORONER FOR MANCHESTER.

At the recent election of a Coroner for Manchester, there was a medical, as well as a legal, candidate. The Manchester Law Association, with its usual promptitude in behalf equally of the interests of the profession and of the public, presented the following able Memorial to the Town Council:—

That the office of coroner is one of high antiquity, and of great importance and responsibility. That the duties of that officer are both judicial and ministerial, though principally judicial; and that it is his province, not only to ascertain the causes of violent or sudden death, but also to inquire concerning the property of persons found guilty of murder or homicide, and concerning other matters requiring the habit of legal investigation. That in cases where the sheriff is supposed to be interested, the coroner discharges the duties of that functionary also.

That these views of the legal character and relations of the office are further sustained by the facts, that the Lord Chief Justice of the Queen's Bench is the principal coroner in the kingdom, and may exercise jurisdiction, as such, in any part of the realm, and that the proceedings upon inquests are directed by law to be duly certified, under seal, to that Court, or to the next assizes.

That the proceedings upon inquests require the steady and skilful superintendence of an officer well versed in those rules of evidence, which are the results of the diversified experience of past ages, and which have been found to conduce materially, at once to the furtherance of public justice and to the maintenance of private rights.

That it is contrary to all precedent to expect that the advantages derivable from legal attainments and ability should be possessed, in a competent measure, by gentlemen whose studies have been directed to totally different pursuits, and whose knowledge of the law, obtained entirely in reference to one object, and confined exclusively to one class of inquiries, must necessarily be partial and incomplete.

That it is a vital principle of justice that the functions of the judge, the witnesses, and the jury, should be kept sacredly distinct; and

that any argument which established that the best witness was the ablest judge, would serve equally to prove that the witnesses should compose the jury, and, as applied to the reasoning in favour of a medical coroner, would imply that none but a medical jury could safely decide upon the cause of death.

That, while the legal coroner is bound to procure the evidence of competent medical witnesses, the medical coroner is not under any obligation to secure legal assistance; but may act, if he will, in the most doubtful cases of law, upon his own imperfect or erroneous opinions, and, by injudicious committals, and the summoning of improper witnesses, would, in all probability, entail great and unnecessary expense upon the borough. That, by summoning medical men of various experience and opinions, the legal coroner and his jury have the opportunity, in cases of difficulty, of forming their own decision from conflicting judgments; whilst a medical coroner would generally feel warranted in directing the jury according to his own individual impressions. That, in a large majority of the cases submitted to the coroner, no doubt whatever exists as to the cause of death; and that, even where such doubt does exist, a very frequent branch of the inquiry concerns the person implicated in the act, the precise character of their crime, and the evidence upon which they should be committed.

That, by this means, questions involving, not only the life and liberty of the subject, but, occasionally, the gravest considerations of constitutional law, require the careful deliberation and solemn decision of the officer presiding over the inquest. That, even if a medical man were the best judge, in cases where the immediate occasion of death is in dispute, he is at least as incompetent as any ordinary person to conduct many of those inquiries which demand the consideration of the coroner; and that the engineer, the architect, and many other classes of persons might, with equal justice, aspire to the judicial seat, upon the strength of their undoubted qualifications to act as professional witnesses.

That the practice of appointing a medical coroner is unusual and new, and has received, in the case of the only medical appointment of coroner ever submitted to the consideration of the Town Council of Manchester, a signal discouragement.

The memorialists, therefore, prayed that the Town Council of Manchester would be pleased to supply the vacancy now existing in the office of Manchester borough coroner, by the appointment of some competent legal gentleman.

Signed on behalf of the Manchester Law Association,

R. M. Whitlow, President.
James Street, Honorary Secretary.

The result of these unanswerable reasons has been, that forty members of the Town Council voted for the *legal*, and only ten for the medical candidate. Mr. Edward Herford has accordingly been appointed to this honourable office.

LINCOLNSHIRE LAW SOCIETY.

TIME OF HOLDING PUBLIC AUCTIONS.

At a Meeting of the members of the Society, held at the Great Northern Hotel, Lincoln, March 8, 1849, William Foster, Esq., V.P., in the Chair,

On the motion of Mr. *Carline*, seconded by Mr. *Danby*, it was

Resolved unanimously.—That it is highly expedient that all Sales of Estates by Auction should commence at the precise time specified in the advertisements, and not an hour or any other indefinite period afterwards as heretofore, which has been productive of great inconvenience, doubt, and annoyance, without any corresponding advantages to either vendors or purchasers, or others interested in such sales; and the necessity for this change is now becoming of greater importance in consequence of the facilities afforded by the railways enabling parties at a distance to attend sales and return the same night, which can never be successfully done so long as the present uncertain and absurd system is pursued.

Resolved also—That in order to give as much publicity as possible to the proposed change, and to effect it simultaneously in all parts of the County of Lincoln, such change take place on and after the 1st day of January, 1850: and that in the meantime copies of these resolutions be forwarded to every member of the Society and practitioner in the county, soliciting not only his pledge to adopt the change, but his cordial co-operation also to carry it into effect, by shewing the advantages of it to his clients and the auctioneers, and other interested parties in his neighbourhood.

Resolved likewise—That these resolutions be published once in each of the county and local newspapers, before the next Summer Assizes, by which time the Society hopes to receive such answers from the solicitors of the county and others, as will enable it finally to determine on the change, and advertise it accordingly.

E. A. Bromehead, *Hon. Sec.*

[We think this is an important suggestion, and trust the practitioners generally will lend their aid in carrying it into effect. The present is a most absurd and inconvenient system; and, considering the facilities afforded by railways, doubtless many parties would attend sales at a distance, from which they have hitherto been debarred, particularly if the hour appointed be adhered to, and they can return home the same evening by a late train. It will clearly be to the advantage of all that a convenient hour should be fixed, and that hour rigidly kept.—Ed.]

STAMPS ON TRANSFERS OF MORTGAGES.

To the Editor of the Legal Observer.

SIR,—The following case has just occurred to me in practice:—In the year 1841, *A.* mortgaged leasehold property (by demise) to *B.*, for securing 500*l.* and interest. In 1847, *A.* assigned the property in question (subject to *B.*'s mortgage) to *C.* *B.* now calls in his money, and *D.*, at *C.*'s request, is about to advance the 500*l.*, and take the usual transfer from *B.* and *C.*, with new covenants, proviso for redemption, and power of sale.

An *ad valorem* stamp on 500*l.* is attached to the mortgage of 1841. What is the proper stamp to be placed on the new security?

Under 55 Geo. 3, c. 184, it is presumed that, without doubt, it would have required a new mortgage stamp; as the person who originally made the mortgage does not continue entitled to the equity of redemption.

The question seems to turn on the 3 Geo. 4, c. 117, on the construction of which, as applicable to this case, as well on the subject of there being in the proposed security new covenants, proviso for redemption and power of sale, as of the present intended mortgagor not being the same person as originally made the mortgage. I shall be glad to see the opinion of some of your very numerous readers.

W. T.

[The Stamp Act, if not generally revised, (which we trust it soon will be,) ought, at least, to be amended and rendered clear in mortgage and other transactions which are of daily occurrence. ED.]

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Norton v. *Hepworth.* Jan. 31 and March 14, 1849.

PRACTICE.—SUBSTITUTED SERVICE.

Order to substitute service (reversing the decision of Vice-Chancellor Wigram), of a bill of revivor upon the solicitor in the original suit.

UPON the filing of an original bill a defendant entered an appearance by his solicitor, but afterwards went to America before the suit was brought to a close. The suit having abated by the death of the plaintiff, his representatives filed a bill of revivor; and, as the defendant still resided out of the jurisdiction, and his residence was not known nor could be ascertained, applied to substitute service in the revived suit on the solicitor who had appeared in the original suit. The Vice-Chancellor Wigram having refused to grant the application, on the ground that it was out of his jurisdiction, this appeal was presented.

The *Lord Chancellor* said, that he would grant this order upon the authority of *Murray* v. *Vipart*, 1 Phill. 521, but that at the same time, he agreed with Lord Lyndhurst, that great caution was necessary to be used in making an order substituting service, because it was so easy for the plaintiff to get up a case by collusion with a third party. The solicitor, it appeared, in the present suit had been constituted the agent of the defendant at its commencement, and there was nothing to show that he was not still authorized to act therein. The order of the Court below must, therefore, be discharged, and an order made to substitute service.

March 16. — *Evans* v. *Protheroe* — Appeal from the Vice-Chancellor Wigram allowed.

— 16. — *Watson* v. *Life* — Order of the Master of the Rolls varied, and amended bill and answer referred to the Master—The costs to follow the order made in the Court below.

— 16.—*M'Clure* v. *Ripley* — Order of the Vice-Chancellor of England, restraining defendant from bringing action at law, discharged.

— 16, 17, 21.— *Stewart* v. *Forbes* — Part heard.

— 21.—*Fitch* v. *Rockfort*—Appeal from the Vice-Chancellor of England allowed.

Rolls' Court.

Hanergall v. *Harrison.* March 5, 1849.

TRUSTEE'S LIABILITY.—INTEREST.

Pending a suit to determine whether a party was entitled as tenant for life or absolutely, the Court will not charge interest on the balances in hand.

THIS suit was instituted in 1841, for the administration of the estate of John Wilkins, and a reference had been made to the Master for

an account. The Master in his report had found, that a sum was due from the tenant for life under the will, who had committed a breach of trust by selling out a certain sum of stock. He also reported that the defendant, who was the personal representative of the tenant for life, who died in 1830, had a balance in his hands of the testator's estate, consisting of dividends and rents received from Long Annuities, and a leasehold house, during the progress of the suit. It appeared that one of the matters decided in the suit was the question whether the tenant for life was not entitled absolutely under the testator's will. No order had been made for the payment of the balance into Court.

Roupell and *Jervis*, for the plaintiff, asked for interest against the tenant for life on the sum found due from her, and also on the balances received by her personal representative.

Turner and *Craig* for the defendant.

The *Master of the Rolls* held, that under the circumstances, no interest could be charged.

Lockhart v. *Alder*; *Same* v. *Crouch*. March 3, 5, 1849.

SALE OF TIMBER.

Circumstances wherein the Court will allow exceptions to the Master's report relating to the sale of timber.

THIS suit was instituted by John Lockhart, jun., against the representatives of John Ingram Lockhart, who afterwards took the name of Wastie, for the administration of John Wastie's estate. The plaintiff alleged that John Wastie had cut and felled on the Sherfield estate, in Hampshire, elm and ash trees, which were put up to sale by auction and sold for 360*l.* 2*s.* 1*d.*; and that he had also cut, felled, and sold oak trees, which produced 1,314*l.* 10*s.* 3*d.* A reference had been made to the Master for an account, and on the 23rd June 1848, the report was made. The cause now came on upon the exceptions (four in number) to that report: 1st, That the Master had found that the testator *was compelled* to pay the interest, which became due, on the securities mentioned in the report, during his life, for which there was no evidence; 2ndly, That the Master had found that the testator *did* pay the interest *which became due* on the said securities during his life, whereas he only paid a part of the same; 3rdly, That the Master had found that the plaintiff was made acquainted, by the correspondence referred to, of the felling of the timber from time to time, for which finding there was no evidence; 4thly, That the Master had found that the timber so cut and sold was *with* the plaintiff's knowledge and acquiescence, which was not the case.

Roupell and *Lloyd* in support of the exceptions; *Turner* and *Shapter* for the defendants in the original bill; *Cooke* for the defendant Crouch in the bill of revivor and supplement, contrà.

The *Master of the Rolls* said, that the fourth exception must be allowed, but that no order could be made on the other three. The defendant Crouch would be allowed his costs, as between solicitor and client.

March 15.—*Attorney-General* v. *Mayor, &c., of Chester*—Reference to the Master on the amount required for the purposes of the charity scheme, and the occupation of part of charity premises, and the proceedings to be taken in regard thereto.

— 15.—*Attorney General* v. *Tuffnell and others*—Decree for account with all proper allowances.

— 16.—*Morgan* v. *Morgan*—Application to charge tenant for life with the back account refused.

— 16, 17, 19.—*Burrell* v. *Maberley, Burrell* v. *Baskerfield, Burrell* v. *Lipscombe*—Judgment on construction of will—Costs to be paid out of estate—The costs since last taxation as between solicitor and client.

— 19.—*Sanders* v. *Dobson*—Case to be sent to Queen's Bench.

— 19, 20.—*Senhouse* v. *Hall*—Stand over.

— 20.—*Watts* v. *Christie and others*—Bill dismissed with costs.

— 20.—*Humble* v. *Humble*—Minutes settled and further directions.

— 21.—*Horsley* v. *Fawcett and others*—Decree for account of dividends, proper allowances to be made.

— 21.—*Mitchell* v. *Koecker*—Master's report confirmed.

Vice-Chancellor of England.

Drever v. *Mawdesley*. Feb. 20, 1849.

CREDITORS' SUIT.

Where there is a deed of trust for the benefit of creditors, the Court will not afford relief beyond the powers of the deed.

THOMAS Legh, afterwards Thomas Cross, and his father, had jointly a power of appointment over certain estates and tithes in Lincolnshire and Cheshire, and in exercise of the power, executed a deed in July, 1822, for the benefit of the son's creditors, who was thereupon released from prison. The trustees under the deed were authorised to grant debentures to the creditors, and a sum of 5,000*l.* a-year was to be reserved for the use of Cross. A decree had been made for an account, and the Master had reported in favour of several creditors, and also three debenture creditors; but, as the trustees appointed by the deed disagreed as to the management of the rents, this suit was instituted. Several of the trustees were dead, and the suit had been revived against their respective representative.

Stuart, Rolt, Bethell, J. Parker, Treslt, Lloyd, Amphlett, C. Hill, Renshaw, and *Cole*, appeared for the respective parties.

The *Vice-Chancellor* said, that the general creditors must submit to the judgment of the

trustees, and that the only circumstance in their favour was, that the decree was for an account. No more could be done by the decree than was authorised by the deed; and as the deed was executed for the chief purpose of liberating the son from prison, and was revocable so far as that the father and son might have conveyed to a purchaser for valuable consideration, no relief could be given to the general creditors.

March 16.—*Estill* v. *Cooke*—Order for payment of money in Court to three petitioners, upon their undertaking to refund if the fourth child were alive.

— 16.—*Fitch* v. *Rockfort*—Injunction restraining pawnbroker from selling certain valuable articles, continued.

— 17.—*Whitehead* v. *Bennett*—Petitioners to have conduct of cause—Receiver to get in rents and pay income to the parties entitled.

— 20.—*In re Balch*—Special order to tax a solicitor's bill.

— 21.—*Cotton* v. *Isaacson and Fairleigh*—Part heard.

Vice-Chancellor Knight Bruce.

(In Bankruptcy.)

Exparte Johnson, in re Bulmer. Jan. 17, 1849.

PROOF OF DEBT.

Where bills in the hands of third parties have been paid in full by dividends on different estates, the assignees under one fiat are entitled to prove as creditors upon the bills under the other.

THIS was a petition by the assignees of a bankrupt's estate, praying that they might be placed in the position of certain bill holders, who had been paid in full. It appeared that Bulmer and Co. carried on business as shippers at South Shields, and had made remittances to Kensington and Co., bankers in London, and that certain bills given by Kensington and Co., as security for Bulmer and Co.'s bills, had got into the hands of third parties, and received payment in full by the dividends declared on the two different estates. It was prayed that the assignees of Kensington and Co. might be placed in the position of the bill-holders so paid, and might have the benefit of such payment.

Russell and *Pryor* in support of the petition; *Wigram* and *Goldsmid* contrà.

The *Vice-Chancellor* said, that as the rights of the petitioners were not taken away by the statute, the Court could not interpose. If any precedent were produced, it would of course be followed. The petitioners must, therefore, be declared entitled to stand as creditors for the amount claimed on the bills in question.

March 16.—*In re the German Mining Company.*—Reference to the Master for the dissolution and winding up the company.

— 16.—*Jones* v. *Giles*—Motion to discharge writ of *ne exeat regno* refused, with costs reserved; but subsequently discharged by consent on payment into Court of a sufficient sum.

— 16.—*Davis* v. *Strutt*—Interim order for injunction.

— 19.—*Exparte Bates, In re Bates; Upton, respondent*—Petition dismissed with costs not exceeding 4*l.* between bankrupt and respondent; and without costs as to other parties.

— 19.—*Exparte Addison, In re Hooper and Addison*—Fiat annulled as against Addison, without costs.

— 20.—*Wood* v. *North Staffordshire Railway Company*—Injunction to be dissolved upon terms by consent, and bill dismissed.

Vice-Chancellor Wigram.

Pelly v. *Wathen.* March 8, 9, 15, 1849.

SOLICITOR'S LIEN.—PRIORITY.

Where a new partner is taken into a firm of solicitors, the lien upon deeds of the original partner is not lost; but it does not extend to deeds which have come into the possession of the new firm, and such lien is subject to a prior equitable mortgage, though the solicitor had no notice of it.

THE Master, by his report, had allowed the claim of the defendants as a lien on an estate in Gloucestershire. The claim was for three bills of costs, incurred by the proprietor of the estate from 1822 to 1833, the first of which was due to the defendant Wathen, the second to the defendant, together with his partner Bassett, and the third to the defendant, together with Bassett and another new partner, Gurney. The plaintiff, who was a second mortgagee from the proprietor of the estate, excepted to the report, and contended that the solicitors ought not to be allowed the amounts of their bills of costs as prior charges on the estate, on the ground that the lien of Wathen was lost on the transfer of the deeds to the new firm of Wathen and Bassett, and that this lien was in its turn lost on the transfer to Wathen, Bassett, and Gurney. It was also urged that the lien for business subsequently transacted only existed subject to the plaintiff's mortgage, and that some of the deeds on which the lien was claimed came into the defendants' hands as trustees for the mortgagor, and not in their professional character.

Wood and *Bevir* in support of the exceptions; *The Solicitor-General, Bazalgette,* and *Follett,* contrà.

Cur. ad. vult.

The *Vice-Chancellor* said, that the lien of the solicitors did not extend further than the interest of their client in the estate on which it was claimed, and that therefore the solicitors were not entitled in respect of their lien to a priority over an equitable mortgage which was of an earlier date, although they had no notice thereof. The lien of a solicitor, accruing whilst carrying on business by himself, will not attach to deeds which have come into his possession jointly with that of partners subsequently associated with him; it will not, however, be lost

by the circumstance of his so admitting the partners, but will still subsist, although the deeds on which the lien was claimed were transferred to the possession of the firm thus newly formed.

March 17.—*Bromley* v. *Wright*—Judgment on construction of will.

— 19, 20.—*Dobson* v. *Land*—*Cur. ad. vult.*

Queen's Bench.

(Before the Four Judges.)

Wetherfield v. *Wingfield.* Hilary Term, 1849.

SLANDER.

The words "You are worse than a murderer" express nothing but the opinion of the speaker, or are mere words of vulgar abuse, and do not impute any offence known to the law, and are not therefore actionable.

An innuendo "meaning thereby that the plaintiff committed murder," applied to such words, is bad.

THIS was an action of slander. The words alleged were "You are worse than a murderer." The declaration set forth the words with the innuendo, thereby meaning that the plaintiff had committed murder. Demurrer and joinder.

Mr. *Peter Borthwick*, in support of the declaration, insisted, that the innuendo merely attributed to the words their proper meaning, and did not enlarge but only explained them.

Mr. *Paterson*, contrà. The words set forth charge no offence, but merely express matter of opinion. There may be many things which the law does not hold to be criminal, but which some men may think worse than murder.

Mr. *Borthwick* replied. It is a rule of law, that where words from their general import appear to have been spoken with a view to defame a party, the Courts ought not to be industrious to put a construction on them different from their common acceptation.

Lord *Denman*, C. J. I perfectly agree with that rule, but I think that we must be both industrious and ingenious here if we are to find out the meaning which the plaintiff must succeed in putting on these words before he can maintain this action. The defendant seems to be a vulgar person, who has used violent language, the use of which reflects discredit on the party using it more than on him to whom it is applied, and which had better be passed by without notice than brought into Court, unless it imputes a distinct charge, from which the party abused is bound to clear himself. It does not impute such a charge here. There is a case of *Palmer* v. *Edwards*, mentioned in Wilson's Reports,[a] as reported in Sir Geo. Cooke's Reports.[b] That appears to have been an action for words spoken of a justice of the peace, viz.—1. You robbed the poor, and are worse than a highwayman. 2. You villain, you robbed the poor, and are worse than a highwayman. 3. You villain, you robbed the poor. 4. You are worse than a highwayman. A general verdict was given for the plaintiff, and 5*l.* damages. And upon motion in arrest of judgment, the Court held the words, "You villain, you robbed the poor," not actionable; and said the words, "You are worse than a highwayman," are very uncertain, for a papist will say so of any protestant; and the judgment was arrested. This bitterness only showed the deplorable state of the person uttering the words, but no distinct charge was imputed, and so no action could be maintained. It is the same here.

Mr. Justice *Patteson*. I do not think that the innuendo here is good, for the words being "You are worse than a murderer," they seem to exclude the possibility of interpreting them to mean that they charge that offence. Then if is said that they are actionable of themselves, the answer is, that they are too uncertain; merely saying that a man is worse than a murderer cannot be actionable, for they do not impute any particular crime, anything for which a man could be indicted. They are mere terms of vulgar abuse.

Mr. Justice *Wightman*. I am entirely of the same opinion. The words are not that the plaintiff was guilty of any crime worse than that which is specified, so as to state that he was in fact guilty of some crime punishable by law, but merely that he was in the opinion of the speaker worse than a person who was guilty of such a crime. Taking these words as they stand, they exclude the charge of a legal offence, and impute something else vaguely, and in a way from which it is impossible to gather that a charge of any specific crime known to the law has been made. The allegation would be satisfied if it was shown that they were spoken of a person guilty of some moral offence, or even merely of entertaining opinions which were very offensive to the speaker. They are too vague to be actionable, and no case has been cited on which such words have been held to be actionable.

Judgment for the defendant.

The Queen v. *Robert Barton.* Feb. 12, 1849.

ILLEGAL CONVICTION.—PUNISHMENT IN DEFAULT OF DISTRESS.

A conviction, under the 29 Charles 2, ordering the payment of penalty and costs, is bad if it orders the defendant to be put in the stocks in default of payment of costs.

THE defendant Barton was convicted by a magistrate in Oxfordshire, for selling walnuts on the Lord's day, under the 29th Chas. 2, and ordered to pay a fine of five shillings, with eleven shillings costs, or in default thereof to be put in the stocks for two hours. The 29th Chas. 2 provides, that if the penalty awarded under the act be not paid, it may be enforced by distress of the offender's goods, and if he has no goods to distrain upon, that he shall be put in the stocks for two hours.

[a] 3 Wils. 184. [b] Sir G. Cooke, 160.

The recent act, 11 & 12 Vict. c. 43, s. 18, provides that in all cases where costs are awarded to a prosecutor by a magistrate's order, or conviction, they may be recovered in the same manner as any penalty adjudged to be paid by such conviction or order, and the 21st section enacts, that where a distress warrant issues, and the offender has no goods to distrain upon, he may be sent to the House of Correction or the County Gaol. Upon a rule to quash the conviction, it was contended, that the punishment of the stocks was a substiution for the penalty, and that the magistrate had no power to order the defendant to be put in the stocks if he did not pay the costs. On the other hand, it was argued, that the costs were a part of the conviction, to be satisfied in the same manner as the fine: and upon nonpayment of either personal punishment was substituted.

Gray was heard against the conviction, and *Barstow* in support of it.

The *Court* was clearly of opinion, that the conviction was bad, as the law only authorised putting the offender in the stocks, if he failed to pay the fine. Under this conviction, if he were able and willing to pay the fine, he would still be liable to be put in the stocks, unless he also paid the costs. For this reason, the conviction must be quashed.

Judgment for the defendant.

M'Swiney v. *The Royal Exchange Assurance Company.* Jan. 19 and Feb. 24, 1849.

INSURANCE OF EXPECTED PROFIT. — COMMENCEMENT OF RISK.

Held, *that the expected profits of a mercantile adventure is a legitimate subject for insurance.*

Held also, *that where a policy was effected on goods "loaded or to be loaded" on board of a particular vessel, the risk began when the ship commenced loading, and attached to that portion of the goods not actually shipped.*

COVENANT on a policy of insurance for 600*l.* on the expected profit of 6,000 bags of rice, loaded or to be loaded upon the ship called the Edward Bilton, from Madras to London. The defendants paid 102*l.* into Court in respect of part of the claim, and denied that there had been any breach of covenant as to the residue of the plaintiff's claim. At the trial at Guildhall, a verdict was taken for the plaintiff for 498*l.*, subject to a special case. It appeared from this case, that the plaintiff being in London, in January 1847, purchased and insured his profit on 6,000 bags of rice, which at that time it was supposed were shipped at Madras for London, and were to arrive here in the month of May per the Edward Bilton. It was afterwards ascertained, however, that on the 18th of October, 1846, the 6,000 bags of rice were at Madras, ready to be put on board, but, on the 21st, the vessel was blown out to sea. She returned to Madras on the 26th, and took on board 1,200 bags of rice, when on the 24th of November she was again driven out to sea, and damaged the 1,200 bags of rice. Having again returned to Madras the damaged rice was sold, and instead of sailing to England with the remaining portion, the Edward Bilton was sent to Calcutta to be repaired, whereby the plaintiff lost the profits which he would otherwise have realized. The defendants admitted their liability in respect of the profit upon the goods actually shipped, and had paid 102*l.* into Court, but denied their liability in respect of the rice which had not been actually loaded.

Martin (with *Willes*) argued the case for the plaintiff, and *Thesiger*, Sir F., and *Bovill*, for the defendants.

The *Court* (after taking time to consider) decided the questions raised in favour of the plaintiff. There was no doubt that the profits expected to be realized by an adventure was properly the subject of a policy of insurance. The authorities cited at bar on the argument, that no risk attached unless the goods had been actually shipped, were not analogous. In this case, although all the goods had not been actually put on board, they were ready to be shipped, and had been sold in London by the party effecting this insurance. The risk began as soon as the ship commenced to take in cargo, and the plaintiff was therefore entitled to recover.

Court of Common Pleas.

Edmonds and others v. *Challis and another.* Feb. 14, 1849.

SHERIFF'S LIABILITY.—REPLEVIN.—COUNTY COURTS' ACT.

The Sheriff, notwithstanding the 9 & 10 Vict. c. 95, must take a replevin bond conditioned to prosecute without delay.

THIS action was brought against the Sheriff of Middlesex, for not taking a replevin bond, and a verdict was given for 35*l.* A rule had been obtained upon leave reserved, calling on the plaintiff to show cause why a verdict should not be entered for the defendant, or new trial had, on the ground that the bond actually taken was sufficient since the passing of the 9 & 10 Vict. c. 95, (the County Courts' Act). It appeared that the bond was conditioned that the obligor should appear and prosecute his suit with effect at the next County Court for Middlesex, to be holden at the Sheriff's Office, Red Lion Square.

The *Court* said, that the older statutes relating to replevin bonds were left unrepealed by the 9 & 10 Vict. c. 95, and that the meaning of the bond was not altered by that act, but was still good under the 11 Geo. 2, c. 19. As, however, there was nothing in the condition requiring the obligor to prosecute without delay, and as it might happen that a Court might be held under the County Courts' Act sooner than that mentioned in the bond, the bond was insufficient, The rule must, therefore, be discharged.

Exchequer.

Halifax v. *Lynn.* Feb. 26, 1849.

BILL OF EXCHANGE.—TITLE OF DRAWER ADMITTED BY ACCEPTANCE.

The acceptor of a bill of exchange is estopped from disputing the title of the drawer, unless where the bill has been uttered after acceptance.

In an action by the indorser of a bill of exchange, drawn on and accepted by the defendant, the latter pleaded that the bill was drawn and endorsed by the "Company of Copper Miners of England," which had obtained a charter of incorporation in the reign of Wm. and Mary, but was signed and endorsed in writing only, and not sealed with the corporate seal. To this plea the plaintiff demurred, and after argument;

The judgment of the Court of Exchequer was delivered by *Parke*, B. who stated that the Court was of opinion that that demurrer ought to be allowed. The defendant had accepted a bill payable to the order of the drawer, and could not therefore dispute the title of the drawer unless it appeared that the bill had been altered after his acceptance. The bill showed a valid consideration on the face of the contract, and must be taken either to have been in its present form when accepted, or to have been accepted in blank, and afterwards filled up. In either case the defendant was estopped from disputing the title of the drawer.

Judgment for the plaintiff.

Nisi Prius.

(*Coram* Erle, J.)

Virtue (*a pauper*) v. *Painter.* Sitting in Hil. Term. Jan. 23, 1849.

REASONABLE AND PROBABLE CAUSE.—FALSE IMPRISONMENT.

In an action for false imprisonment upon a charge of felony, held, *that the question of malice is for the jury, but the question of reasonable and probable cause is exclusively for the judge to determine.*

The plaintiff, a cabman, was found at ten o'clock at night, in a yard where he was accustomed to come to hire cabs, harnessing his horse to a cart belonging to the defendant, and the defendant gave him into custody upon a charge of attempting to steal his cart. The plaintiff, suing *in formâ pauperis*, brought an action for false imprisonment. Upon the proof of these facts, *Erle*, J., left it to the jury to say if the defendant had been actuated by malice, and intimated his opinion, that if the defendant had reason to believe the plaintiff intended to steal his cart, there was no ground for supposing he was influenced by any malicious motive. The jury, after some discussion, found that the defendant was actuated by malice, and gave the plaintiff a verdict with 10*l.* damages.

Borthwick and *Symons* for the plaintiff; *Holligan* for the defendant.

Erle, J., then said:—He had left all that he ought to the jury; and then came the question of reasonable and probable cause; and that was for him. As at present advised, it seemed to him there was reasonable and probable cause. The plaintiff must, therefore, be nonsuited, but with leave to move to enter a verdict for the plaintiff, if the Court should be of opinion there was an absence of reasonable and probable cause.

Plaintiff nonsuited.

(*Coram* Lord *Denman*, C. J.)

Keymer v. *Laurie* (*Knight*) *and others.* Feb. 26, 1849.

DUTY OF BANKER.—ACCEPTANCE PAYABLE AT BANKING-HOUSE.

Held, *that the acceptance of plaintiff of a bill who also made it payable at his bankers', was sufficient warrant for its payment.*

The plaintiff, a stationer in the city, banked with the Union Bank of London, of which the defendants are trustees. In February, 1848, a bill for 42*l.* 15*s.* was drawn on the plaintiff, who accepted it, making it payable at the Union Bank, London. When the bill became due it was presented at the Union Bank for payment, and the defendants' clerk, not being aware that the plaintiff had only 21*l.* standing to his account, paid the bill. He afterwards discovered his mistake, and made an application to the plaintiff to know whether the bill was to be paid. The plaintiff said it was not, and that as the bill had been accepted for the accommodation of a person who had become bankrupt, it was not to be paid, but to be proved before the Commissioner. A check was afterwards drawn by the plaintiff upon the defendants' bank for 7*l.* 11*s.*, which they refused to honour, on the ground that they had already paid on the plaintiff's account more than they had in their hands belonging to him. The plaintiff thereupon brought the present action, alleging that he had sustained damage by the dishonour of the check. The question raised by the pleadings and evidence was, whether the defendants were justified in paying the bill for 42*l.* 15*s.* accepted by the plaintiff, as it was admitted, if that bill had not been paid, the defendants would have had money in their hands belonging to the plaintiff sufficient to pay, and would have been bound to have honoured, his check. If the bill had been properly paid, however, the defendants had no funds remaining in their hands, and were not liable for any damage occasioned by the dishonour of the plaintiff's check.

Lord *Denman* told the jury that, in his opinion, the acceptance of the plaintiff, who had made the bill payable at his bankers', was a sufficient warrant to the defendants to pay the amount, and that consequently they were justified in their refusal to honour the plaintiff's check.

The jury returned a verdict for the defendants.

Crowder appeared for the plaintiff, and *Gurney* for the defendants.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

PRACTICE.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75.
Law of Costs, p. 35.
Law of Evidence, p. 56.
Law of Attorneys, p. 341.
Courts of Equity:
Law of Property and Conveyancing, pp. 113, 401.
Principles of Equity, pp. 134, 380.
Practice, p. 196.
Pleadings, p. 361.
Bankruptcy, p. 158.]

ADMISSIONS.

Upon a bill for an injunction to restrain the defendants from using a certain mark, alleged to be fraudulently used by them on goods, in order untruly to denote that such goods were manufactured by the plaintiffs, the Court at the hearing retained the bill, and gave the plaintiffs liberty to bring an action, but refused to direct any admission to be made by the defendants on the trial of such action. *Rodgers* v. *Nowill*, 6 Hare, 337.

2. *Trial of a legal right.—Inconsistency with form of issue.*—At the hearing of a suit to enforce an equitable security for the payment of an annuity which was impeached on the ground of a defective statement of the consideration in the memorial, the Court below directed an issue to try whether the deed was a good, valid, and binding deed, and whether the plaintiff was, by virtue thereof, entitled to recover the annuity, but at the same time ordered that the defendant should, on the trial, admit the due execution of the deed, (such execution having been regularly proved in the cause): *Held*, on appeal, that the direction as to the admission was inconsistent with the form of the issue; and further, that as the plaintiff's title to relief in equity depended on a legal right, the Court ought not to interfere with the trial of that right in a court of law by requiring the defendant to admit any fact upon which it depended. *Elderton* v. *Lack*, 2 Phill. 680.

3. *Trial of legal right.—Jurisdiction to impose admission on defendant.*—On a bill to restrain the continuance of a trespass alleged to have been actually committed, the Court, in putting the plaintiff to his action, will not require the defendant to admit any fact that enters into the question of trespass, at least unless such fact be clearly and unqualifiedly admitted in the answer. *Duke of Beaufort* v. *Morris*, 2 Phill. 683.

ANSWER, NOTICE OF.

See *Notice*.

APPEALS.

The Lord Chancellor does not, by varying an order or decree upon appeal, take possession of the cause in its ulterior stages; but subsequent proceedings go on in the Court below as if his lordship's order had been made there. *Sowden* v. *Marriott*, 2 Phill. 623.

CONVEYANCER'S OPINION.

See *Master's Report*.

CO-PETITIONERS.

Not heard by separate counsel.—Where there is a petition and cross-petition, and several respondents in the one unite as co-petitioners in the other, the Court will not allow such respondents to be heard by separate counsel, except so far as their cases turn upon questions distinct from each other. *Ex parte Bass, In re Stephen*, 2 Hare, 562.

CREDITORS' SUITS.

Two suits against the same party.—Where executors, against whom a decree has been obtained in a creditor's suit, wish to stay proceedings in a similar suit instituted against them by another creditor in a different branch of the Court, the motion ought to be made in that branch of the Court to which the latter suit belongs, and not in the other. *White* v. *Johnson*, 2 Phill. 689.

DISMISSAL OF BILL.

1. *Want of prosecution.*—A bill was filed against *A.* and *B.* *A.* obtained an order to stay proceedings, until the plaintiff had paid the costs of a former suit for the same object, and which had been dismissed with costs. The plaintiff, not paying the costs, was prevented from proceeding against *A.*, and, after considerable delay, *B.* procured the bill to be dismissed for want of prosecution. *Lautour* v. *Holcombe*, 10 Beav. 256.

2. *Dalton* v. *Hayter not overruled.*—The case of *Dalton* v. *Hayter*, 7 Beav. 586, is not overruled by *Arnold* v. *Arnold*, 1 Phill. 805. In the General Order relating to dismissal for want of prosecution, the expression "last of the answers" means the last of the answers of one of several defendants moving to dismiss; but in the General Order relating to amend-

ments, the expressions "the last answer" and "the last of several answers" mean the last of the several answers of the several defendants. *Sprye* v. *Reynell*, 10 Beav. 351.

EXECUTOR.

See *Receiver*.

FI. FA., WRIT OF.

See *Writ*.

FORECLOSURE.

Enlarging time after enrolment of order absolute.—The enrolment of an order absolute of foreclosure does not, any more than an enrolment of the decree of foreclosure, preclude the Court from again enlarging the time in a proper case and upon the usual terms. *Ford* v. *Wastell*, 2 Phill. 591.

GUARDIAN AD LITEM.

Infant defendant.—Commission or appearance of infant.—The circumstance that infants are residing in two different parts of the kingdom, is not a sufficient ground for dispensing with the practice for assigning a guardian *ad litem* by commission or upon their appearance. *Mower* v. *Orr*, 6 Hare, 417.

See *Infant*.

HABEAS CORPUS.

See *Jurisdiction*, 1.

HEARING.

Right to be heard when one plaintiff appears in person, and the other by counsel.—If one of two plaintiffs appears in person, the other cannot be heard by counsel, for co-plaintiffs cannot sever, nor can the same party be heard both in person and by counsel. *Newton* v. *Ricketts*, 2 Phill. 624.

INFANT.

Form of reference.—Reserving costs to the hearing.—Upon a reference to inquire whether it was for the benefit of infants in whose name a suit had been instituted, that the same should be prosecuted, the Master reported that it was, and exceptions to his report were overruled; but a petition to confirm the report, and for payment by the defendant of the costs of the reference, was, by the Court below, ordered to stand over till the hearing of the cause: *Held*, on appeal, that such an order was contrary to the practice, and it was discharged, and an order made according to the prayer of the petition. *Raven* v. *Kerl*, 2 Phill. 692.

See *Guardian ad litem*.

INJUNCTION.

1. *Opposing bill in parliament.—Semble*, where the right of a party to petition parliament against a bill pending there, depends solely upon his having some private interest which is likely to be affected by it, this Court has the same jurisdiction to restrain him by injunction from so petitioning, as it would have to restrain him from bringing an action at law or asserting any other right connected with such interest. *Stockton and Hartlepool Railway Company* v. *Leeds and Thirsk and the Clarence Railway Companies*, 2 Phill. 666.

2. *Hearing.—Action at law.*—In a suit for an injunction against the use by the defendants of a certain name and mark upon their goods, the defendants admitted the use of the name and mark, but said that it was their true name, and that they were entitled so to use it: the plaintiffs, without moving for the injunction, went into evidence in equity. At the hearing of the cause, the Court being of opinion that the evidence did not establish the plaintiffs' right to the injunction, but that it showed the defendants to have used the name and mark in question on their goods, in a manner which might lead purchasers to understand falsely, that the goods were manufactured by the plaintiffs, gave the defendants the option of either having the bill dismissed against them without costs, or of having the right tried at law.

The bill being retained for a year, with liberty to the plaintiffs to bring an action at law, the action was brought, and the plaintiffs recovered a verdict. The Court then granted the injunction, and ordered the defendants to pay the costs at law and in equity, except the costs of the evidence in equity. *Rodgers* v. *Nowill*, 6 Hare, 325.

Cases cited in the judgment: Motley v. Downman, 3 Myl. & Cr. 1; Bacon v. Jones, 4 Myl. & C. 433; Crawshaw v. Thompson, 4 Man. & G. 357; Perry v. Truefitt, 6 Beav. 66.

3. *Legal right.—Equitable assistance.*—Where the question of equitable assistance depends on the legal right, and the legal right is denied by the answer, the plaintiff may move for leave to try the legal right, without asking for an injunction in the mean time. *Rodgers* v. *Nowill*, 6 Hare, 332.

4. *Action at law.*—On a bill for an injunction to protect the plaintiffs' coal mines from injury by the water overflowing to them from the defendants' colliery, the Court on motion granted an injunction restraining the defendants from working their coal-mines in any places which might injure or endanger the plaintiffs' mines until answer, or further order, but gave no directions for the trial of the right in a court of law. The parties went into evidence, and the cause was brought to a hearing, when the Court refused, until the plaintiffs had established their right at law, to make the injunction perpetual, but retained the bill for a year, giving the plaintiffs liberty to bring such action as they might be advised, continuing the injunction in the mean time. *Duke of Beaufort* v. *Morris*, 6 Hare, 340.

5. *Protection of legal right.—Quære*, Whether the present practice of the Court is in any case upon motion (not *exparte*) to grant an injunction for the purpose of protecting a legal right which is not admitted, without providing by the order for the trial of the right in a court of law? *Duke of Beaufort* v. *Morris*, 6 Hare, 349.

6. *Hearing.*—The circumstance that the de-

fendants submit to an injunction granted upon an interlocutory application, and that none of the acts complained of were subsequently repeated, is no objection to the injunction being made perpetual at the hearing of the cause. *Duke of Beaufort* v. *Morris*, 6 Hare, 350.

ISSUE.

Mode of determining legal right.—The question in the cause being, whether the plaintiff was entitled, under an agreement for a building lease, to a covenant for the use of a certain road, which he claimed, 1st, by contract as implied in the delineation of a plan in the margin of the agreement, and, 2ndly, on the ground of acquiescence, the Court directed an action to try the alleged legal right, first reserving the question of acquiescence as a purely equitable one, and material only in case the legal right should be determined against the plaintiff.

The Court will direct the defendant in equity to be plaintiff in such action, if by that means the right can be more conveniently tried. *Mott* v. *Blackwall Railway Company*, 2 Phill. 632.

See *Admissions*, 2.

JURISDICTION.

1. *Habeas Corpus.*—*Semble*, where a motion for the discharge of a prisoner is made before the Vice-Chancellor in a Rolls' cause, or in a cause attached to another branch of the Court, the Vice-Chancellor cannot (unless specially authorised) make an order on such application, although the prisoner be brought before him by habeas corpus. *Newton* v. *Askew*, 6 Hare, 321.

2. *Evidence.*—Considerations which influence the Court in directing inquiries at the hearing of a cause to perfect the evidence on behalf of the plaintiff; and distinction where the inquiries are sought to show that the plaintiff is entitled to relief in the suit, and where the title to some relief being proved, the inquiries are to be directed only to the measure of that relief. *Simmons* v. *Simmons*, 6 Hare, 360.

Case cited in judgment: Marten v. Wichelo, Cr. & Ph. 257.

LUNATIC.

1. *Allowance to Committee.*—The committee of the estate of a lunatic is not entitled to any remuneration for his trouble. Where any allowance at all is made to him, it is not for his sake, but for the benefit of the estate, as where rents cannot be effectually collected by the Committee without assistance. *In re Walker*, 2 Phill. 630.

2. *Allowance to Committee.*—Allowance not exceeding five per cent. on receipts, to committee of lunatic's estate, for expenses out of pocket in collecting rents. *In re Westbrooke*, 2 Phill. 631.

MASTER'S REPORT.

Conveyancer's opinion.—It is informal for the Master to state in his report, that he has found his opinion as to the vendor's title upon the opinion of a conveyancer. *In re Collard*, 10 Beav. 334.

NOTICE.

Filing answer—23rd General Order of Oct. 1842.—An answer was filed on Saturday, and an order *nisi* to dissolve the injunction obtained on the same day. Notice of filing the answer and of the order was not given till Monday. Upon motion to discharge the order *nisi*, the Court finding that the plaintiff had not been prejudiced, refused to discharge it, but made the defendant pay the costs. *Lord Suffield* v. *Bond*, 10 Beav. 331.

PETITION.

A testator died seised of a moiety of a plantation in Jamaica. *A.* and *B.*, the owners of the other moiety, granted a lease of it to the trustee and executor of the testator's will. He died before the lease expired. After his death, certain persons resident in Jamaica were appointed receivers and managers of the testator's estates, in a suit in this country, for the execution of the trusts of the will; and a merchant in London was appointed consignee and receiver of the produce of the estates. The managers and receivers took possession of the entirety of the plantation, and shipped the produce to the consignee, but did not pay *A.* and *B.* any rent. *A.* and *B.*, though not parties to the suit, petitioned, in it, to be paid the arrears of rent due to them, out of the funds in the cause, which had arisen from the balances paid in by the consignee. The Court directed a preliminary inquiry, with a view to granting the prayer of the petition. *Neate* v. *Pink; exparte Fletcher and another*, 15 Sim. 450.

PRO CONFESSO.

88th Order of 1845.—A bill was taken *pro confesso*, and was served, but the defendant could not afterwards be found. Liberty was given to the plaintiff, under the 88th order of 1845, to issue and execute such process of contempt as he might be advised, to compel the performance of the decree. *Brown* v. *Home*, 10 Beav. 400.

PRODUCTION OF DOCUMENTS.

1. *Affidavit.*—Upon a motion for production of documents, the defendant was permitted to produce an affidavit to show that they were privileged: *Held*, that the plaintiff was not entitled to use an affidavit in opposition to it. *Blenkinsopp* v. *Blenkinsopp*, 10 Beav. 143.

2. *Admission of possession.*—A defendant admitted that documents were in his solicitors' hands, having come to them as the representatives of the solicitors of the defendant's testator; but he said they were not "in his possession or power or under his control." The Court refused to order a production. *Palmer* v. *Wright*, 10 Beav. 234.

3. *Trustee and cestui que trust.*—Disputes arose between two *cestui que trusts*, in respect of the trust matters, and the trustee acted as solicitor for one: *Held*, that the communications between such solicitor and *cestui que trust* were not privileged as against the other. *Tugwell* v. *Hooper*, 10 Beav. 348.

RECEIVER.

Recorder.—*A.* and *B.* were trustees and executors. *A.* paid more than he received, in the expectation of repayment out of a mortgage forming part of the assets. *A.* died and *B.* refused to act. In an administration suit, a receiver of the mortgage was appointed against the representatives of *A.* *Palmer* v. *Wright*, 10 Beav. 234.

SERVICE OF TRAVERSING NOTE.

Leave given to serve a traversing note on a defendant, for whom the plaintiff had entered an appearance, though the case was not within the 36th order of May, 1845, which authorises such service only on a defendant, who defends either in person or by a solicitor. *Moss* v. *Buckley*, 2 Phill. 628.

SETTING DOWN CAUSE.

Equity reserved.—Where a bill has been retained at the hearing, with liberty for the plaintiff to bring an action, it is not irregular for the plaintiff, on having a verdict in his favour, to obtain an order for setting down the cause on further directions, or on the equity reserved, although the time at which the defendant may move for a new trial shall not have arrived. *Rodgers* v. *Nowill*, 6 Hare, 338.

TRAVERSING NOTE.

See *Service.*

WRIT OF FI FA.

Order of May 1839.—*Interpleader Act.*—An application by a sheriff, who, in the execution of a *fi. fa.* for costs under the order of May, 1839, had seized goods which were claimed as the property of third parties, to be protected from an action, and that the claimants might come in *pro interesse suo*, refused; the sheriff not being, like a sequestator, an officer of this Court, and the protection given to him by the Interpleader Act, (1 & 2 Wm. 4. c. 58,) being confined to exception of process at law. *Rock* v. *Cook*, 2 Phill. 691.

BUSINESS OF THE COURTS.

COMMON LAW SITTINGS.

Queen's Bench.

In and after Easter Term, 1849.

MIDDLESEX.

In Term.

1st Sitting, Tuesday . . . . . April 17
And following days at Eleven o'clock.
2nd Sitting, Friday . . . . . April 20
And subsequent days at Eleven o'clock.
3rd Sitting, Saturday . . . . . May 5
At half-past Nine o'clock precisely, for Undefended Causes only.

A list of Causes will be printed immediately, but on the uncontradicted statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, and a small number of completed and new causes will be put into the list, day by day, in their usual order.

Sitting after Term, Wednesday . . . . May 9
At half-past 9 o'clock.

LONDON.

In Term.

Sitting at 10 o'clock, Monday . . . . May 7

For Undefended Causes and such Causes as are tried in Middlesex after Term, with judgment of the Term.

After Term.

Thursday . . . . . May 10
(To adjourn.)

Common Pleas.

In and after Easter Term, 1849.

In Term.

MIDDLESEX.		LONDON.	
Wednesday	April 18	Friday	April 20
Wednesday	25	Friday	27

After Term.

MIDDLESEX.		LONDON.	
Wednesday	May 9	Thursday	May 10

N.B.—The Court will sit at 10 o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Thursday the 10th May, in London, no causes will be tried, but the court will adjourn to a future day.

Exchequer of Pleas.

In and after Easter Term, 1849.

In Term.

IN MIDDLESEX.

1st Sitting, Tuesday . . . April 17
2nd Sitting, Thursday . . . 26
3rd Sitting, Thursday . . . May 3

IN LONDON.

1st Sitting, Wednesday . . . April 25
2nd Sitting, Wednesday . . . May 2

After Term.

IN MIDDLESEX.		IN LONDON.	
Wednesday	May 9	Thursday	May 10

(To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 31, 1849.

"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

BANKRUPT LAW CONSOLIDATION BILL.

THE Metropolitan and Provincial Law Association, following the example of the Incorporated Law Society,[a] caused a petition to be presented to the House of Lords, during the last week, praying that the further progress of the Bankrupt Law Consolidation Bill should be postponed until after the Easter Recess; and the presentation of this petition afforded an occasion for some observations from Lord Brougham, the scope and bearing of which are not very intelligibly reported in the daily newspapers. The upshot, however, appears to be, that although the petition was framed, considered, and adopted by the Committee of the Association from which it emanates, long before Lord Brougham, on the suggestion of the Incorporated Law Society, agreed to postpone the bill until the 10th of May, the petition was not presented until after that arrangement was decided upon, and the object of the petition was therefore already substantially effected. The presentation of the petition of the Metropolitan and Provincial Association, however, cannot be deemed useless or unimportant, as it testifies the unanimity which prevails amongst the members of the profession both in town and country as to the expediency and necessity of a further examination and consideration of many of the provisions of the proposed bill.

The annual alterations introduced in this branch of the law have produced the most serious evils, and it is not because an amendment is earnestly and universally desired, that a measure should be hastily adopted, which, whilst it introduces many valuable amendments, contains some provisions of questionable utility, and perhaps some that would effectually mar the beneficial operation of the act. We may remind those who cannot understand, why, inasmuch as the bill was introduced last Session and has subsequently been discussed and considered in Select Committee, it should not become law without further delay, that the bill printed towards the close of the last Session and then circulated, differs materially from that now before the House of Lords. The printed copy has swollen from 110 to 132 pages, and to say nothing of numberless minor alterations, the bill printed at the commencement of this Session contains, by way of addition to the bill of last year, the two most important, and as it appears to us, objectionable sections, namely,—1st, that which relates to arrangements between debtors and creditors, with the concurrence of a certain number only; and 2ndly, that relating to the distribution of the estates of deceased debtors. These divisions of the bill, we have reason to think, are not very generally known, or if known, not sufficiently understood.

[a] The substance of the Incorporated Law Society's petition is printed, *ante*, p. 387.

By the enactments contained this bill, with respect to arrangements between debtors and creditors, it is intended to modify, extend, and give effect to the remarkable and hitherto little-known provisions of the act 7 & 8 Vict. c. 70. The operation of that act was expressly confined to debtors "not being traders;" but it is now proposed to give effect to such arrangements between *any* debtor—be he trader or non-trader—and his creditors, with the concurrence of a portion of the latter; provided the debtor is "unable to obtain the consent of the whole of his creditors to any deed of composition." The powers conferred upon the Commissioners of the Court of Bankruptcy by the 7 & 8 Vict. c. 70, we understand, have not been extensively exercised, chiefly because the machinery of the act was so imperfect and defective that the benefits it offered to insolvent debtors could not in practice be realised;—in other words, the act could not be worked. In the instances in which it has been attempted to bring its provisions into operation, unmitigated injury has been done to the creditor. The most important judicial power conferred upon the Commissioner—that of allowing the petition—was exercised upon a private *exparte* examination of the insolvent and his friends, and all the subsequent proceedings were conducted in private. The practical defects of the measure, other than those which are patent, and which have been the subject of judicial observation, have not been forced upon the attention of the public, or of any but a very limited number of the members of the profession. The changes now proposed to be introduced are of a sweeping and comprehensive nature. Secrecy, which was the principle of the 7 & 8 Vict. c. 70, is, as it appears to us, very advantageously changed for publicity, for Art. 277 provides, that upon allowing the debtor's petition *de bene esse*, the Court "shall cause notice of the filing of such petition, and of the allowance thereof *de bene esse*, to be advertised in the *London Gazette*," &c. Without entering into a critical examination of the articles comprised within the section concerning arrangements between debtors and creditors, we may observe, that by this section it is proposed to establish a system novel in principle, and to give effect to which forms of procedure must be adopted having no analogy to any with which the legal profession or the public have been hitherto familiar. Without condemning or approving the contemplated alterations, we contend that their magnitude and importance offer abundant reasons why they should be universally and maturely weighed and considered before they are finally determined upon.

The chapter relating to the distribution of the estates of deceased debtors in certain cases, is avowedly a perfect novelty in English legislation. It is founded upon such of the provisions of the act 2 & 3 Vict. c. 41, "for regulating the sequestration of the estates of bankrupts in Scotland," as relate to the sequestration of the estate of a deceased debtor. How these provisions have worked in Scotland,—how far they are applicable to the machinery and practice of the Court of Bankruptcy in England, are matters of grave consideration, on which it is indispensable that not only the two or three peers and others who attended the Select Committee, but the general public, and the legal profession especially, should have an opportunity of forming a correct opinion. A brief analysis of the leading provisions of this branch of the new bill will at once demonstrate the importance, the novelty, and the strangeness of the contemplated changes.

Art. 292 provides, that application may be made by petition to the Court [i.e. of bankruptcy] within the district of which any deceased debtor resides or carries on business at the time of his death, for distribution of his estate and effects, by any creditor to a sufficient amount to constitute a petitioning creditor's debt; but no adjudication for distribution shall be made, until after the expiration of three months from the debtor's death, unless such debtor shall have been a trader and committed an act of bankruptcy within 12 months, or unless *the successor* of such debtor concur in the petition or renounce the succession, in which cases adjudication for the sale and distribution of the effects of the deceased shall be made *forthwith*.

It is only right to add, that the term *successor*, used in the article last cited, and several of the subsequent articles in this chapter, is subsequently defined to mean "executors, administrators, administrators *de bonis non*, and next of kin, to be reckoned by the same rules of consanguinity as are applied in determining parties entitled to letters of administration."

Art. 293 enacts, that where a petition is presented for distribution of the estate and effects of a deceased debtor, the debtor's successor is to be summoned to show cause why adjudication for distribution should not be made, and if no cause to the contrary be shown by him, "or any party interested," the Court shall make adjudication for the sale and distri-

bution of the estate and effects of the deceased debtor, for payment of his creditors, upon proof of the debt and that the debtor died more than three months before filing the petition; or that such debtor was a trader and committed an act of bankruptcy, or that his successor concurred in the application or renounced the succession, although three months may not have elapsed from the time of the debtor's death.

Our space will only permit us to present our readers with the substance of the article next in order, (Art. 294,) which provides,—That *forthwith*, after the filing of the creditor's petition, if the Court shall be satisfied there is probable cause for believing the rights of creditors will not be sufficiently secured without an immediate seizure of the property of the deceased debtor, a warrant may be issued for this purpose, under which all the goods and chattels, papers, monies, &c., of the deceased debtor at the time of his death may be seized and kept until further order.

The remaining provisions under this head are equally strange and unlike the practice and proceedings to which the inhabitants of this part of the United Kingdom have been heretofore accustomed. We have been informed, that the Lord Advocate and the Solicitor-General for Scotland have both given the advantage of their experience on this subject to the Lords' Committee. We have not yet had any opportunity of perusing their evidence; but, however their testimony may lead to the conclusion that such enactments are adapted to the state of society and operate beneficially in Scotland, the question remains to be answered by English practitioners, whether they would work in this country in harmony with the feelings and habits of the people, and whether the machinery of the Court of Bankruptcy is well adapted for carrying them into effect.

Until the evidence taken before the Select Committee, since its re-appointment at the commencement of the Session, has been distributed and maturely considered, the matter cannot be deemed ripe for discussion, much less for legislation. And—although we do not desire that the bill should stand over until the next Session,—that result would be much less objectionable and injurious to the public than precipitate and ill-digested legislation upon a subject, involving interests so complicated, extensive, and important, as will be affected by the proposed measure.

On this subject, the following communication has been addressed to the Editor:—

Sir,—As a supplement to the judicious observations in your journal, the other day, respecting the Bill for Consolidating the Law of Bankruptcy, I may point attention, (and trust that they may receive it in Committee,) to the provisions regarding the registrars of the Court. It seems to me quite unnecessary that the Legislature should be called upon to authorise the present Chief Registrar to retire, for if the duties which the bill proposes to transfer to the Chief Registrar be really transferred, the present Chief Registrar may be fairly pronounced entitled to secede from (comparatively) so onerous an office, by reason of infirmities, necessarily increasing with his age, and disabling him from the due execution of it,[a] with its duties so increased;—and entitled, therefore, to request the Lord Chancellor to exercise the power he already possesses under the 5 and 6 Vict. c. 122, s. 84, and appoint him the salary therein mentioned.

To this vacant place another gentleman named in the bill is to succeed, and another, also named, to *his* place. Why not leave these appointments to the Lord Chancellor,—much the fittest person to determine who is the best qualified to fulfill them? To make the nomination of particular individuals part and parcel of a great measure such as this, suggests the idea of a job, and injures the character of the whole enactment. It is not to be supposed, however, that the Lord Chancellor will suffer the patronage, that never was more honestly exercised, to be thus taken from him without opposition or remonstrance.

The bill then proposes to subject all future appointment of these officers to the principle of seniority, a mode of appointment which is open to the same objection as that noticed above. These points should be looked to.

Scrutator.

LORD BROUGHAM'S CONVEYANCE OF REAL PROPERTY BILL.

TAXATION OF CHARGES FOR DEEDS, &c.

We noticed this Bill immediately on its introduction in the House of Lords, (see p. 306, *ante*, 17th February). It rapidly passed *sub silentio* through the house, and was carried to the Commons on the 23rd of February, on which day it stands thus recorded: "Message from the Lords—that they have passed a bill intituled 'An Act to amend and extend certain of the provisions of an Act made in the 8th and 9th year of her present Majesty, intituled An Act to facilitate the Conveyance of Real Property.'"

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[a] This gentleman, as the chief officer on the first establishment of the Court, is fairly entitled to special consideration.

No step whatever has been taken since the arrival of the bill in the Lower House; it has not even been read a first time, and, consequently, has not been printed for the Commons. The reason of this suspension of the measure for now upwards of five weeks, does not appear.

We understand that on the first movement which may be made to forward its progress, some important amendments will be suggested, for in its present state it will do mischief, and cannot do good. Our readers, who noticed our former remarks, will have understood that this project has for its object the shortening of all deeds, wills, or other instruments; and the means by which this end is sought to be effected, is by requiring the taxing officer *not* to consider the *length* of the instrument, but the *skill, labour, and responsibility* of preparing it.

Now, if "the labour" is to be considered, the length cannot be excluded, for the extent of the labour will mainly depend upon the length. There may be great "skill" in shortening a deed, and for a long time the skill will involve much "responsibility." We expect that few solicitors or conveyancing counsel will be disposed to sit down and abridge the well-established forms of deeds, on the supposition that the labour, skill, and responsibility, of such abridgment will receive due recompense.

Then, how is the Taxing Master to deal with these cases? He must make himself perfectly acquainted with the title to the property to be conveyed or settled,—with the objects of the parties,—the difficulties and impediments in the way of effecting those objects,—the ulterior purposes to be attained, —and, in short, must go through all the labour, which devolved upon the solicitor or the counsel, in order to judge whether they have diligently carried into effect the objects of the noble proposer of this measure—that of shortening the deed or instrument under consideration.

Whatever may be the hopes of the Real Property Reformers upon this subject with the view, as they profess, of "diminishing the burthens upon land," it must be the next generation that will derive the advantage of such relief, for, like the Statute of Frauds, the amount of a subsidy will not pay the expense of settling and firmly establishing the validity of a new set of forms for all kind of deeds and instruments.

NOTICES OF NEW BOOKS.

Questions for Law Students on the Second Edition of Mr. Serjeant Stephen's New Commentaries on the Laws of England. By JAMES STEPHEN, Esq., of the Middle Temple, Barrister-at-Law. 1849. Butterworth. Pp. xvi., 273.

THIS Series of Questions, founded on Mr. Serjeant Stephen's New Commentaries on the Laws of England, has been accurately compiled, and doubtless will be useful to the diligent student of the law. Several of the questions relate to elementary and general topics which are not likely to be put under any system of examination, or to occur in actual practice, but in a book of questions, founded upon a scientific work of the comprehensive nature of the Commentaries, they are properly introduced, and will have the effect of rendering the Commentaries more easily comprehended and better remembered.

Mr. Stephen observes in his preface that a very few words will be sufficient to introduce to the public a book of which the design is obvious, and in regard to which little merit can be claimed by the author, beyond that of acquaintance with the Commentaries on which the questions have been written. He adds that the utility of questions upon any scientific subject, capable of methodical arrangement, is very generally acknowledged, and he justly conceives that the law student in particular will derive from their use very material assistance, particularly in that early period of his studies during which he is frequently his own instructor.

With regard to the execution of his task, Mr. Stephen has chiefly aimed at clearness and precision. It has been found impossible, he says, to avoid sometimes putting a question in such a form that it may be answered by glancing at that immediately following, or, occasionally, by a simple affirmative or negative; but the author submits that helps to the memory, such as these, are only intended for those who are bent on self-improvement, and who will be wise enough not to look beyond the question immediately under consideration. The student should obviously endeavour to incorporate in his answer all the information to be found in the passage of the Commentaries by which the question has been suggested.

SEQUESTRATORS' REMEDIES BILL.

A BILL has been brought in by Mr. Mullings and Mr. Headlam, to extend the Remedies of Sequestrators of Ecclesiastical Benefices. For this purpose it is proposed to enact:

1. That whenever a sequestrator is appointed by a bishop or other ordinary to levy and raise from the profits of an ecclesiastical benefice any debt or duty of the incumbent thereof, such sequestrator may from time to time bring and prosecute any action or suit at law or in equity, in his own name as such sequestrator, against any person or persons whomsoever thereunto liable, for the render or recovery of any tithes, tithe rent-charge, tithe composition or substitution, obvention, pension, portion, or other payment for or in the nature of tithe due to such incumbent, or for the recovery of any rent due or payment reserved or made payable to such incumbent under any lease of or covenant or agreement to let the glebe, tithe, or other parcel of the benefice to which the appointment of such sequestrator relates, when and upon or after such sequestration the time of the render or payment of such tithes, charge, rent, or payment shall have arrived or shall from time to time arrive.

Provided that such sequestrator shall not be bound to sue any party so liable unless and until security, to be approved by such sequestrator, shall be given by the creditor suing out the writ of *levari facias*, upon or by virtue of which such sequestration shall have issued, for indemnifying such sequestrator and the bishop or other ordinary from all costs, charges, and expenses to be incurred in the prosecution of such action or suit, or to which he or they respectively may become liable in consequence thereof, the expense of such security to be deducted or allowed out of any money to be received by the creditor by virtue of such action or suit.

2. That the payment or render to such sequestrator, with or without suit, by the party thereunto liable, of any such tithe, tithe rent-charge, tithe composition or substitution, rent, due, or payment, shall effectually discharge the party making the same from all liability to the incumbent of such benefice in respect thereof, and that such sequestrator shall and may apply and shall account for the monies received or arising under or by virtue of such render, payment, or recovery in like manner as other goods and profits of the benefice liable to sequestration.

ATTORNEYS' CERTIFICATE DUTY.

WE understand that very ample preparations have been made, and are nearly completed, for bringing on the question of the Repeal of the Certificate Duty in the House of Commons. Several hundred petitions will be presented by a large proportion of the members. It is scarcely necessary to say, that the parties aggrieved by this tax, residing as they do in upwards of a thousand towns and cities in England and Wales, have required considerable time to bring the statement of their case before Parliament, and this will account for the delay which to some impatient and never-satisfied persons appears to be unreasonably prolonged.

Then comes the question, who is to introduce the measure into the House? It appears that several influential members, distinguished for their ability and important position, are willing to undertake the duty; but it is probable that the subject will be introduced by Lord Robert Grosvenor, who has been absent during the winter in a warmer climate on account of the illness of a near relative, but whose return is now shortly expected. As the principal member of the metropolitan county, in which the great body of attorneys and solicitors reside, and eminently esteemed in the House, not only for his rank, but his high character and sound judgment, this nobleman is above all other persons best fitted to advocate the claim of the profession. We have reason to believe that his lordship has a conscientious and strong feeling of the right of the profession to be relieved from this impost, and if there will not be any considerable delay in waiting for his arrival, we should think that the promoters of the measure will act wisely in reserving their application until after the Easter recess.

The following petitions for the repeal of the tax have been presented—from

Bromyard, by Mr. *Cornewall Lewis*.
Epsom, by Mr. *Henry Drummond*.
Hertford, by Viscount *Mahon*.
Hull, by Mr. *Baines*.
Lancaster, by Mr. *Armstrong*, Q. C.
Leominster.
Plymouth, by Viscount *Ebrington*.
Pwllheli, by Mr. B. *Hughes*.
Rugby, by Mr. *Spooner*.
Sandwich, by Mr. *Deedes*.
Wincanton, by Mr. *Wm. Miles*.

PROFESSIONAL COSTS. — COUNTY COURTS.

THE Judges in these Courts having assumed a power which was never intended to have been conferred on them, in refusing to allow the attorneys' costs, it would be useful, when an opportunity offers, to get an enactment

making it obligatory on them to allow such costs when an attorney actually attends.

In a recent case of ejectment in the Lambeth County Court, the officer committed a mistake in the summons, which rendered a second summons and a second hearing necessary; and although judgment was given for the plaintiff, *the Court refused* the costs of the attorney's attendance on both occasions. Is this just?

The Courts should be oftener holden, and surely the authorized clerk of a professional man who is allowed to attend a Judge at Chambers, a Master in Chancery, or a Commissioner in Bankruptcy, should be permitted to represent his principal in the local Courts.

AN ATTORNEY.

EFFECT OF DEPRECIATION OF GOLD ON MORTGAGES, &c.

To the Editor of the Legal Observer.

SIR,—When all the world are speculating on the effect which the expected influx of gold into this country will have on property of different descriptions, and when a considerable increase of that metal seems certain, and the relative value of gold and other property at least extremely likely to be changed, I think it will not be out of place to call the attention of those engaged for clients in mortgage and other loan transactions, to the position those clients would be placed in should such a change take place to any considerable degree, and the means of guarding them against the chance of loss by such a change. For argument's sake, suppose the present quantity of gold in this country to be doubled, and its value consequently diminished by one half, but the quantity and value of silver to remain the same as at present, it would not be reasonable to suppose that 20*s.* (silver) could then be obtained for a sovereign (gold) of the present weight, but that a sovereign must be reduced in value to 10*s.*, and that this reduction in the relative value of gold must take place in respect of every other description of property as well as silver.

Suppose a party now to mortgage a house worth 1,000*l.* for 500*l.* The property of the mortgagor and mortgagee, in respect of this security, is equal to one-half each of the present value of the security. But if the change above-supposed took place, the mortgagor could sell the house for 2,000*l.*, pay the mortgagee 500*l.*, or one quarter, and pocket 1,500*l.*, or three-fourths. Or the mortgagee, while getting back 500*l.*, would only be really receiving half of the value of what he lent, for, for the 500*l.* so received, he could only get in silver or any other property, what 250*l.* would buy at the time of the loan, while the mortgagor gets what would equal 750*l.*

It may be said, but such a change to any considerable degree, would be followed by a new gold coinage, and the weight of gold coin be increased in proportion to the diminished value of gold. This, I imagine, would be so. But even then, if my premises are right, several questions arise. If a new coinage took place, is it, according to the terms in which repayment in mortgages, bonds, &c., is now usually stipulated for, sufficiently clear, that the borrower would be bound to repay his debt in so much gold coin as might be then in circulation, as would be equal to the present value of the sum advanced? It seems to me scarcely so. If there were a new coinage, the weight of the pound and testing might not be increased, but its present weight retained, and its value, in respect of silver and copper coin diminished. In that case the payment of the number of pounds stipulated for would literally comply with the terms of agreement. Or the pound might be abolished altogether, and some new coin substituted, and it would then be very difficult to say, by what standard the relative value between the new coin, and the pound sterling at the time of the loan could be accurately ascertained. But even if the pound was increased in weight in proportion to the diminished value of gold, and borrowers were bound to pay the number of pounds borrowed in the pound sterling, would it not be some time before such a change in the coinage could be effected? Would not the true relative value of gold be ascertained and adjusted in private transactions long before it would at the Mint? Would not borrowers be able to effect new loans or sales with ease, and so get rid of their old incumbrances long before a new coinage could take place.

The danger arising from such depreciation might be obviated by an express declaration, that "pounds meant so much current money of the realm, at the time of repayment, as would be equal to the present value of the sum named, and that the standard of such value should be silver, corn, or land," or any other description of property deemed least likely to fluctuate in value.

It may be thought presumption to anticipate such changes in making an investment. But the history of this country shows the contrary. The effect at this day of the provision of the 18th Elizabeth,—reserving part of the rent of college leases in corn and malt when the former was 6*s.* 8*d.*, and the latter 5*s.* per quarter, and the result of the practice, that obtained at the beginning of this century during the great scarcity of money caused by the war, of in effect reserving the repayment of the sum advanced in government and stock instead of money,—show that changes even as great as above-supposed have been anticipated, guarded against, and taken place.

Z.

THE TRIAL OF BAXTER.

(*From Macaulay's History of England.*)

We subjoin the following report of the trial of the celebrated Baxter, Incumbent of Kidderminster, and rejoice at the different conduct manifested by the judges of the present day with that exemplified in the turbulent times in which Baxter lived. It is almost superfluous to add, that he was for many years incarcerated in jail by his inexorable judge.

"When the trial came on, a crowd of those who loved and honoured Baxter filled the Court. Two Whig barristers of great note, Pollexfen and Wallop, appeared for the defendant. Pollexfen had scarcely begun his address to the jury when the Chief Justice (that barbarian Jefferies) broke forth,—"Pollexfen, I know you well. I will set a mark upon you. You are the patron of the faction. This is an old rogue, a schismatical knave, a hypocritical villain. He hates the Liturgy. He would have nothing but long-winded cant without book;" and then his lordship turned up his eyes, clasped his hands, and began to sing through his nose, in imitation of what he supposed to be Baxter's style of praying,—"Lord, we are thy people, thy peculiar people, thy dear people." Pollexfen gently reminded the Court that his late Majesty had thought Baxter deserving of a bishopric. "And what ailed the old blockhead then," cried Jefferies, "that he did not take it?" His fury now rose to madness. He called Baxter a dog, and swore that it would be no more than justice to whip such a villain through the whole city. Baxter himself attempted to put in a word, but the Chief Justice drowned all expostulations in a torrent of ribaldry and invective, mingled with scraps of Hudibras. "My lord," said the old man, "I have been much blamed by Dissenters for speaking respectfully of bishops." "Baxter for bishops," cried the judge, "that's a merry conceit indeed. I know what you mean by bishops—rascals like yourself—Kidderminster bishops — factious snivelling Presbyterians." Again Baxter essayed to speak, and again Jefferies bellowed, "Richard, Richard, dost thou think we will let thee poison the Court? Richard, thou art an old knave. Thou hast written books enough to load a cart, and every book as full of sedition as an egg is full of meat. By the grace of God I'll look after thee. I see a great many of your brotherhood waiting to know what will befall their mighty don; but by the grace of God Almighty *I will crush you all.*" The noise of weeping was heard from some of those who surrounded Baxter. "Snivelling calves," said the judge.

The reverend vicar was after the Restoration chaplain of Charles the 2nd, and preached before his Majesty.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Feb. 20th, to March 23rd, 1849, both inclusive, with dates when gazetted.

Collins, John, and Henry Adolphus Rigley, 5, Crescent Place, Bridge Street, Blackfriars, Attorneys and Solicitors. March 20.

Hall, Frederick John, and William Jenkins, Newport, Monmouthshire, Attorneys and Solicitors, March 20.

Loveland, Thomas Myddleton, and Henry Hugh Beckitt, 64, Lincoln's Inn Fields, Attorneys, Solicitors, and Conveyancers. Feb. 27.

Watson, Robert Francis Broughton, and Francis Broughton, jun., Falcon Square, City, Attorneys and Solicitors. Feb. 23.

PERPETUAL COMMISSIONER.

Appointed under the Fines' and Recoveries' Act.

Underwood, Richard, Hereford, in and for the City of Hereford, and in and for the County of Hereford. March 9.

MASTERS EXTRAORDINARY IN CHANCERY.

From Feb. 20th, to March 23rd, 1849, both inclusive, with dates when gazetted.

Claye, Thomas, Manchester. Feb. 23.

Harvey, Charles, Spalding. March 13.

Hill, Thomas Ames, Paulton. March 2.

Husband, John Edward Colvill, Rhyl. March 6.

Parsons, Arthur, Nottingham. March 2.

Smith, Hubert, St. Leonard's, Bridgnorth. March 20.

Thursfield, John Hunt, Wednesbury. March 6.

Tribe, William Foard, Worthing. March 2.

STATE OF LAW BILLS IN PARLIAMENT.

Royal Assent.

March 22nd.

Overseers of the Poor.

House of Lords.

Corrupt Practices at Elections. Put off *sine die.*—The Lord Chancellor.

Consolidation and Amendment of the Bankrupt Law. Waiting for commitment.—Lord Brougham.

Criminal Law Consolidation. In Select Committee.—Lord Brougham.

Conveyance of Real Property Act Amendment. Passed.—Lord Brougham.

Marriages in Scotland. In Committee.—Lord Campbell.

Births' Registration in Scotland. For 2nd reading.—Lord Campbell.

Proceedings against Clergy. For 2nd reading.—Bishop of London.

Out Door Paupers. Passed.

Petty Sessions. In Committee.

Distraining for Rates. Passed.

House of Commons.

Real Property Transfer. In Select Committee.—Mr. H. Drummond.

Joint-Stock Companies' Transfers of Shares. In Committee.—Mr. Headlam.

Conveyances by Mortgagees and Trustees.—In Committee.—Mr. Headlam.

Assignment of Life Policies. In Select Committee.—Mr. Fagan.

Affirmations in lieu of Oaths. Reported.—Mr. Wood.

Law of Public Roads. For 2nd Reading.—Mr. Cornewall Lewis.

Improvement of Law of Landlord and Tenant. For 2nd reading.—Mr. Pusey.

Parochial Assessments.—Sir H. Inglis.

Law of Marriage.—Hon. J. S. Wortley.

Marriages Abroad.—Sir H. Inglis.

Corrupt Practices at Elections. For 2nd reading.

Bribery at Elections Prevention. In Committee.—Sir J. Pakington.

Qualification of Voters.—Sir De Lacy Evans.

Insolvent Members. Reported—Mr. Moffatt.

Navigation Laws. In Committee.—Mr. Labouchere.

Abolishing Punishment of Death.—Mr. Ewart.

Copyhold Compulsory Enfranchisement.—Mr. Anglionby.

Attorneys and Solicitors for Ireland. For 2nd reading.—Mr. G. Hamilton.

Larceny Act Amendment. Passed.

Annual Indemnity. Passed.

Passengers. For 2nd readng.

Sequestrators' Remedies. In Committee.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Beardmore v. *London and North-western Railway Company.* Feb. 17, 21, 24, 1849.

RAILWAY.—INJUNCTION.

Where the deviation from the line in the Railway Act is within the limits allowed, an injunction will not be granted.

THE Vice-Chancellor of England, on the 8th and 9th Feb., granted an injunction to restrain the defendants from raising an embankment on an extension of the railway to Birmingham, whereby the plaintiff's premises were damaged, by the entrance thereto being obstructed, and the light and air blocked out. It appeared that the plaintiff occupied premises, partly in High Street and partly in Navigation Street, and that the defendants had to build a bridge across one, and a tunnel under the other street. In order to carry on these works the defendants had raised a mound, and obstructed the approaches to the plaintiff's premises. It was alleged that the company had deviated from their plans and levels as exhibited for the construction of the railway and sanctioned by parliament. For the company it was contended, that the deviation was not beyond the limits, and that the obstructions complained of formed no ground of injunction but only for increased damages; and this appeal was, therefore, presented.

Bethell and *Speed* for the appellants; *Stuart* and *Craig* for the respondents.

The *Lord Chancellor* said, that the question was, whether the company's act and the 8 Vict. c. 20, (The Railway Clauses Consolidation Act), authorized the elevation complained of. A certain deviation was permitted by the Company's Act, and it did not appear that the present deviation exceeded such permission, as contained in the 14th and 16th sections. The cases of *The Feoffees of Heriot's Hospital* v. *Gibson*, 2 Dow. 301, and *The North British Railway Company* v. *Tod*, 12 C. & F. 722; 4 Rail. Ca. 449, were authorities on the deviation from plans. The order of the Court below must, therefore, be discharged.

Injunction discharged.

In re Dawson. March 14, 1849.

MARRIED WOMEN.

Notwithstanding the consent of all other parties to an allowance for the maintenance of an infant, a feme covert *who has a contingent interest cannot consent.* Cavendish *v.* Mercer, 5 Ves. 195, *n. overruled.*

THIS petition was presented for an allowance for the maintenance of an infant who had a contingent interest in a fund. It appeared that all the parties entitled to the reversion consented, but that one of them was a *feme covert*.

J. Parker, for the petitioner, cited *Cavendish* v. *Mercer*, 5 Ves. 195, *n.*

The *Lord Chancellor*, however, refused to make an order, on the ground that no married woman had the power to deal with her reversionary interest.

March 24.—*Cooper* v. *Earl Powis*—Appeal dismissed with costs.

— 24.—*Penny* v. *Watts*—Part heard.

— 23, 28.—*Stewart* v. *Forbes*—Part heard.

Rolls' Court.

Attorney-General v. *Shiel.* Jan. 31, March 14, 1849.

PRACTICE.—IRREGULARITY.—WAIVER.

An answer and demurrer cannot be filed whilst the defendant is in contempt, and the irregularity is not waived by the plaintiff's taking an office copy.

THIS was a motion to take the answer and

demurrer of the defendant off the file for irregularity, on the ground that when the defendant filed them he was in contempt, and could not plead in this form, but must put in a full answer. For the defendant it was contended that the plaintiff had waived the objection by taking an office copy of the answer and demurrer, to which the plaintiff urged that waiver by taking an office copy only applied to an answer, and not to an answer and demurrer.

The *Master of the Rolls* said, that the irregularity had not been waived by taking the office copy, and the motion to take the answer and demurrer off the file must, therefore, be granted, with costs.

Hele v. *Lord Bexley and others.* March 7, 1849.

ANNUITY.—PRIORITY OF INCUMBRANCERS.

Certain incumbrancers had been reported by the Master as entitled to priority over the plaintiff, and leave had been obtained to file supplemental bill to bring them before the Court. The plaintiff, having impeached therein some of those incumbrances, such parts were ordered to be dismissed with costs.

THIS suit was instituted against the defendant as trustee under the will of Sir William Stonehouse, against W. R. Rowe, to whom the estates had been conveyed in April, 1815, upon trust for sale, and against other parties claiming interests. The bill prayed the appointment of a receiver, and an injunction to restrain the defendants from interfering with the estates, and a reference to inquire respecting incumbrancers and their priorities. A reference had been directed, and the Master reported certain persons to be incumbrancers, and that some of them were entitled to priority over the plaintiff's annuity. The cause came on in January, 1845 upon this report, and was ordered to stand over, with leave to the plaintiff to file a supplemental bill to bring the incumbrancers found by the report before the Court. It was accordingly filed, but the plaintiff impeached in such bill some of the incumbrancers to which the Master had given priority. The defendants to this bill, on the other hand, impugned the plaintiff's annuity in their answers on the ground that the memorial did not comply with the requirements of the Annuity Acts.

Roupell and *Rogers* for the plaintiff; *Turner, Walpole, Lloyd, Shapter, Malins,* and *Purvis* for the respective defendants.

The *Master of the Rolls* dismissed, with costs, so much of the supplemental bill as impeached the incumbrancers to which the Master had in his report given priority, and likewise all that was prayed for against Donovan, one of the defendants, which was not asked by the original bill. The cause stood over to determine the form of action to be brought to ascertain the validity of the plaintiff's annuity, and to settle the issue to be sent.

March 23.—*Atcheson* v. *Atcheson*—*Cur. ad vult.*

March 23.—*Banks* v. *Sladden*—Order that dividends should fall into the residue of the testator's estate for the benefit of the residuary legatees, till the death of the party during whose life they were to accumulate.

— 24.—*Senhouse* v. *Hall*—Stand over.

— 24.—*M'Michael* v. *Kipling*—Stand over.

— 23, 26, 27.—*Howard* v. *Prince*—Stand over.

— 27.—*In re Smith, exparte Foley*—Motion to discharge order for taxation of bills of costs refused without costs.

— 27.—*Berkeley* v. *Tomkins*—Demurrer for want of equity allowed—leave to amend,

— 28.—*Cooke* v. *Lonsdale*—Injunction restraining infringement of copyright in certain musical compositions made perpetual.

— 28.—*Moore* v. *Jones*—Part heard.

— 28.—*In re Sudlow and The Dover and Deal Railway Company*—Motion to discharge common order to tax bill of costs, on the ground that they ought to be taxed on the parliamentary scale, refused by consent—the practice being to tax them on that scale.

Vice-Chancellor of England.

Miller v. *Pridden.* Feb. 21, 1849.

NEW TRUSTEE.—ANNUITANTS.

Power was given to appoint trustees, or a trustee, and one trustee was solely appointed. A sale took place, and on an objection by the purchaser, another trustee was appointed and the sale was completed, both trustees executing the conveyance. Afterwards the first-named sole trustee failed, and the purchase-money was lost. The annuitants on the fund were held not entitled to relief against the purchaser.

WILLIAM PRIDDEN, on the 30th October, 1813, executed a voluntary settlement, and settled certain freehold, copyhold, and leasehold property upon his sons, William Pridden, jun., and Edward Pridden, subject to the payment of certain annuities to his daughter, Alice Miller, and her children. The settlement contained powers of sale, and of appointing new trustees, and provided, that "immediately after such appointment, the estates should be conveyed in such manner that the same might vest in the new trustee or trustees jointly, or in such trustee or trustees alone, as they might appoint." The trustees originally appointed were James Pridden and Thomas Storey, but upon the death of the latter, James Pridden repudiated the trust, and by a deed dated December, 1831, appointed Robert Cook sole trustee. Edward Pridden having contracted to sell his share of the estate to William Pridden, the purchaser's counsel suggested that two trustees should have been appointed. A deed was, therefore, executed on the 25th March, 1841, whereby Robert Cook and Edward Holmes were appointed trustees: the representatives of James Pridden, who was dead, joining in the deed of appointment. The purchase was then completed, the trustees and

William Pridden giving a joint and several receipt for the purchase-money. Cook subsequently became embarrassed, and the purchase-money was lost. This suit was, therefore, instituted by the annuitants for a declaration that the annuities still remained a charge upon the estate, upon the ground that the trustees were not duly appointed.

Bethell and *Malins* for the plaintiff; *Stuart* and *Shapter* for the purchaser; *Rolt, J. Parker, Lloyd, Whitbread, Freeling* and *V. Dawson* for the other parties.

The *Vice-Chancellor* said, that the retirement of the old trustee and the appointment of the new trustee by recital was valid, as the deed contained an express power for the appointment of one sole trustee. Cook, the sole trustee, was therefore duly appointed, and the purchaser having had a discharge from Cook and Holmes jointly, had a discharge from Cook solely, according to the maxim *superflua non nocerit*. The bill must, therefore, be dismissed as against the purchasers, with costs.

March 22.—*Cotton* v. *Isaacson and Fairleigh*—Injunction granted to restrain actions on bonds.

— 23.—*Hearne* v. *Windsor, Staines, and South Western Railway Company*—Injunction to restrain defendants from entering upon lands, refused.

— 24.—*Lord* v. *Wightwick*—Exceptions allowed to interrogatories settled by the Master.

— 24.—*Douglas* v. *Smith*—Bill for cancellation of annuity deed dismissed with costs.

— 26.—*Glover* v. *Hall*—Bill praying declaration that assignor under a deed duly assigned life interest, and that petitioner was entitled to the residue, dismissed with costs.

— 27.—*Attorney-General* v. *Marsh*—Motion to commit for breach of injunction refused with costs—leave to give short notice of motion for injunction.

— 27.—*Ramsay* v. *Thorngate*—Specific performance of contract for purchase of annuity decreed with costs.

— 28.—*Parrott* v. *Congreve*—Motion to dissolve injunction restraining the sale of certain property under assignment, dismissed with costs.

Vice-Chancellor Knight Bruce.

(In Bankruptcy.)

Exparte Stewart, In re Stewart; Sloper, respondent. Feb. 19, 1849.

TRADING.—LEASEHOLD BUILDING GROUND.

Quære, Whether the taking a lease of land and building houses thereon is a trading within the meaning of the Bankrupt Laws.

THIS petition was presented by the bankrupt, to have the fiat annulled for want of trading. It appeared that the petitioner had bought or leased land, and had built houses for the purpose of letting. The fiat had issued two years ago, and although this petition was presented immediately, it stood over for the consent of the creditors, five of whom, however, still insisted on payment in full.

Russell and *Bramwell* appeared in support of the application, and cited *Exparte Edwards*, 1 Mont., Deac. & De G. 3.

Swanston and *Bacon* for the respondents, cited *Exparte Neirinckx*, 2 Mont. & Ayr. 384.

The *Vice-Chancellor* said, that having regard to the observation of Sir George Rose, J., in *Exparte Neirinckx*, cited at bar, that "all persons building on their own land are within the act (6 Geo. 4, c. 16) if their principal intent is to obtain profit"—he could not at present annul the fiat. An action of trover might, however, be brought in the Court of Exchequer, the act of bankruptcy and petitioning creditor's debt not to be contested, the declaration to be delivered within 10 days, and the venue laid in Surrey, so that the cause might be tried at the ensuing Kingston assizes.

Exparte Monk, In re Potter. Feb. 19, 1849.

ASSIGNEES ABANDONING CONTRACT.—REMOVAL OF MATERIALS.

The bankrupt's assignees, having abandoned a contract for purchase of land on building lease, were allowed six weeks to remove the building materials.

THIS was an application calling on the assignees to elect either to adopt, or abandon, a contract entered into by the bankrupt for the purchase of certain building land at Birkenhead, and for which it appeared a sum of 8,000*l.* was to be paid. The assignees elected to abandon the purchase, but asked, as the applicant would benefit by the forfeiture of the deposit, to be allowed six months for the removal of the bricks which were upon the lands.

Bacon for the assignees; *Malins*, in support of the application, objected to the length of time asked as unreasonable.

The *Vice-Chancellor*, therefore, allowed the assignees six weeks only for the removal.

Exparte Sturges, In re Kernot; Cattlin, respondent. Feb. 21, 26, 1849.

PETITIONING CREDITOR'S DEBT.—COSTS OF ATTORNEY.

An attorney having taken his debtor in execution cannot issue a fiat, and a doubtful claim for costs omitted in the judgment will not be substituted.

THIS petition was presented to annul the fiat for want of a sufficient petitioning creditor's debt. It appeared that the debt in question was the amount of a bill of costs which the respondent claimed for business done by him as the bankrupt's attorney, and also for damages and money paid for the bankrupt's use. Before the fiat was issued, the bankrupt had been taken in execution for this debt, and it was urged that the debt was thereby discharged. In an action brought by the respondent, as assignee of the bankrupt, against

the petitioner, the same question had arisen and a nonsuit was entered. The respondent, however, alleged that a supplementary debt was due in respect of some items omitted in the bill of costs, and of some other charges, and which claims were not affected by the nonsuit. He also denied the validity of the debt said by the petitioner to be due on account of certain advances made by the petitioner's wife.

Bacon and *Bagshawe* in support of the petition; *Swanston* and *Shebbeare* contrà.

The *Vice-Chancellor* said, that the sufficiency of the debt, on which the bankrupt had been taken in execution, had been disposed of by the nonsuit and by the result of the application for a new trial. Then as to the question, whether a sufficient debt could be shown *ultra* that which had failed, the Court would not be induced to maintain the fiat upon a debt not on the proceedings, and which was only introduced after the action in which the validity of the fiat had been contested, unless a strong case were established. The sufficiency also of the debt was more than doubtful. The addition sought to be made included a charge for perusing documents, and even if an attorney might increase a bill already delivered by adding omitted items of expenditure, he could not do so for the present purpose. The present fiat could not, therefore, be maintained, nor could an inquiry be further made if the petitioner were a *bonâ fide* creditor, or merely for the purpose of defeating the fiat. Although there was a great probability of the debt, yet as there were inaccuracies in the examination of the petitioner, the Court would permit the further examination of the petitioner and his wife. Some allowance, however, ought to be made for unpractised persons under cross-examination, and also that the debt was confirmed by contemporaneous documents which appeared to be genuine. The fiat must, therefore, be annulled, unless the respondent could successfully impeach the right of the petitioner to be considered as a creditor.

March 23.—*In re Tomlinson (an infant) and* 2 & 3 *Vict. c.* 54—Stand over to 29th upon an undertaking that the infant should remain in the meantime in its mother's custody and be properly provided for.

— 23, 24, 27—*Hayward* v. *Purssey*—Part heard.

— 26.—*Exparte Pilkington, in re Ashworth; Lord and others, respondents*—Fiat to be annulled, on undertaking to issue another before 18th April—Petition to be dismissed with costs against Lord, and the bankrupt to have his costs as increased by marking him a party—costs reserved as to the rest.

— 26.—*Exparte Bolckow and Vaughan, in re Maclean.*—Stand over for petitioners to take other proceedings to establish their claim.

— 26.—*Exparte Wood, in re Worsley*—Referred to Commissioner to inquire whether assignees had purchased any of the estate.

— 28.—*In re Tomlinson*—Part heard.

Vice-Chancellor Wigram.

Hepworth v. *Heslop.* Feb. 23, 24, 1849.

EXECUTOR.—GIVING SECURITIES FOR BOND DEBT.

An executor, holding assets belonging to the testator, either in money or goods, may pay a bond debt, or obtain a release thereof, giving his personal security for the same, and set it up in his discharge as a debt actually paid out of the testator's estate.

THIS was a creditor's suit instituted for the administration of the estate of a deceased testator. Several questions had arisen as to the allowance of certain sums: 1st, whether the executor, who was the testator's son, was entitled to retain a sum of 500*l.* against the specialty creditors. It appeared that the sum was secured by a bond, which was alleged to have been given shortly before the testator's death, in payment of the arrears of salary due for services rendered in the testator's business as a wine merchant. The Master, however, disallowed the discharge of the executor on the ground that the consideration had not been proved. The next question was, whether the executor was to be allowed the amount of two bonds for which he had given security after the testator's death, taking from the obligees a release of their claim on the estate. The Master reported against the allowance, on the ground that as the executor was in point of fact the purchaser of the bonds, he was only entitled to stand in the place of the obligees, and could not, therefore, be considered to have paid the bonds as an executor.

The cause now came on upon exceptions to the report.

The *Vice-Chancellor* said, that upon the exception as to the bond for 500*l.*, an issue would be directed to inquire whether the testator at the time of executing the bond was indebted to his son in the sum secured, and that the circumstances of the case justified the putting the onus of proof on the obligee. As to the other bonds, releases had been given by the creditors, and the executor claimed to be allowed them as payments, alleging that he had merely exercised his legal right of preference in regard to the creditors. The Master, however, had put him in the place of the obligees. The state of the assets at the time of giving security was such as to exceed in value the amount secured by the bonds. If these assets had been given in satisfaction of the bonds to the creditors, and afterwards returned to the executor on his giving security, the executors' right to the allowance could not be questioned. The exception as to the two bonds to the two creditors, must, therefore, be allowed.

March 22.—*Solicitor-General* v. *Corporation of Bath, Attorney-General* v. *Blair*—Order for payment to relators and schoolmaster of costs out of charity estates, but not to the corporation;—income of charity be paid in future to any two of the trustees.

— 22.—*Innes* v. *Sayer*—Judgment on construction of bill.

— 23.—*Kirwan* v. *Daniel*—*Cur. ad. vult.*

March 25.—*Attorney-General* v. *Murdock*—Stand over—the cause to be set down without delay.

— 27.—*Bagshawe* v. *M'Neill, Knt.*—Part heard.

— 28.—*Bagshawe* v. *Eastern Union Railway Company*—Demurrers to the bill overruled.

— 28.—*Dobson* v. *Land*—Motion for suppressing depositions refused—leave to examine *vivâ voce* in certain matters before the Master—costs reserved.

Queen's Bench.

(Before the Four Judges.)

Exparte Loader. Jan. 24, 30, 1849.

REWARD TO ENGINE KEEPER.—ENFORCING PAYMENT OF.

Where the churchwardens refuse to apply to a justice to consent and approve of payment of a reward to an engine-keeper entitled thereto, under the provisions of the 14 *Geo.* 3, *c.* 78, *the engine-keeper may summon the churchwardens before a magistrate, and the latter may fix the amount of the reward as directed by the act, and make an order on the churchwardens for the payment thereof.*

THE 14 Geo. 3, c. 78, commonly called "The Building Act," after reciting, that it would be beneficial to have a number of engines ready for extinguishing fires within the metropolitan districts, directs by ss. 74–78, *inter alia*, that a reward not exceeding 20*s.*, to be fixed by the churchwardens, should be paid to the keeper of the "second large engine" which arrives at the fire, but that no such reward shall be paid without the consent of a magistrate of the county. Thomas Loader, being the keeper of a large engine, and such engine being brought the second to help to extinguish a fire in Gray's Inn Lane, in the parish of St. Andrew, Holborn, applied to the churchwardens of that parish to fix and pay the reward, and upon their declining to take any steps summoned them before a police magistrate, to show cause why they should not pay 20*s.*, or such other sum as the magistrate should fix. The magistrate refused his consent or approbation, upon the ground that he had no jurisdiction to consent or approve, unless the churchwardens made the application to him for that purpose. A rule was then granted by this Court, under the recent act (11 & 12 Vict. c. 44), calling upon the magistrate and the churchwardens to show cause why the former should not give his approbation and consent to the payment by the churchwardens to the applicant, of the sum of 20*s.*, or such less sum as the magistrate should fix.

Lush showed cause against the rule which was supported by *Humfry* and *Huddlestone*.

The *Court* was of opinion, that either the churchwardens or the engine-keeper might initiate the application to the magistrate for his consent and approval. In either case the magistrate was to fix the reward; but if the churchwardens refused to name any sum, and nothing else appeared to disentitle the engine-keeper to the reward, the magistrate was bound to exercise his judgment, and determine the sum the churchwardens should pay. Upon these considerations the rule was made absolute.

Reg. v. *Justices of Harwich.* Jan. 29, 30, 1848.

INFORMATION BEFORE ONE JUSTICE.—SUFFICIENCY OF.

An information for penalties, under the 8 *&* 9 *Vict. c.* 86, *s.* 7, *is rightly laid before one justice, although such information must be afterwards adjudicated upon by two or more justices.*

An information was exhibited by one Richard Stephen, before Richard Bolton, one of the justices of the borough of Harwich, against Stephen Russel, under the 8 & 9 Vict. c. 86, s. 7, (The Customs Regulation Act,) for omitting to report the arrival of a vessel called the "Howard," of which Russel was master, within 24 hours after her arrival in port. The information afterwards came on for hearing before a bench of four magistrates, and the defendant pleaded "not guilty;" but the magistrates declined to adjudicate upon the case, on the ground, that the information ought to have been laid before two justices in the first instance, whereas it appeared to have been exhibited only before one.

A rule was afterwards granted, on the motion of the *Attorney-General*, calling upon the magistrates who had refused to adjudicate, to show cause why a mandamus should not issue, commanding them, or any two of them, to adjudicate upon the information. Cause was afterwards shown against this rule by *Shee*, S. L. and *Lush*.

Lord *Denman*, C. J., said, that upon an examination of the various clauses of the act 8 & 9 Vict. c. 86, the Court was of opinion that it was sufficient for the information to be exhibited before one justice, though it must afterwards be adjudicated upon by two or more, The rule for a mandamus was, therefore, made absolute.

Queen's Bench Practice Court.

Stevenson v. *Shickle.* Jan. 30, 1849.

PROHIBITION TO COUNTY COURT.—TITLE TO FRANCHISE.

A prohibition to the County Court, on the ground of want of jurisdiction, does not lie, where the title to an office is not in question, but merely the extent of the powers which the possession of the office confers on the holder.

A plaint was entered in the County Court, holden at Wisbeach, for a trespass in entering the plaintiff's house and seizing certain weights and measures. At the trial the defendant attempted to justify by showing that he was an examiner of weights and measures, appointed under the 37 Geo. 3, c. 143, and committed the alleged trespass in that capacity. The answer to this defence, on the part of the plaintiff, was, that under the 5 & 6 Wm. 4, c. 63,

to entitle an examiner of weights and measures to enter the plaintiff's house he must have a magistrate's warrant, and that the defendant had no such warrant. The judge of the County Court was of this opinion, and gave judgment for the plaintiff, with 5*l.* damages.

A rule was afterwards granted in this Court, calling upon the judge of the County Court of Cambridge (within whose district Wisbeach lies,) to show cause why a prohibition should not issue to restrain him from proceeding any further in the case, on the ground that the defendant's title to the office of examiner came in question, and that such office was a franchise within the meaning of the County Courts' Act, 9 & 10 Vict. c. 95, s. 58.

Wilmore showed cause against the rule, which was supported by *Pashley*.

Erle, J., (after taking time to consider,) thought the ground for a prohibition failed. It was not necessary to decide whether the office of examiner of weights and measures was a franchise within the meaning of the 9 & 10 Vict. c. 95, s. 58, it was enough to say that the title to the office was not the point in dispute before the judge of the County Court. The question for his decision was, the extent of the examiner's powers which depended upon the construction to be put upon the statutes ; but the question was altogether distinct from a question as to the validity of the defendant's appointment, which appeared to be taken for granted in the Court below. If the learned judge of the County Court was in error in his construction of the statutes, it was no ground for a prohibition, and no other question was determined. The rule for a prohibition could not therefore be supported. Rule discharged without costs.

Common Pleas.

Young and another v. *Raincock*. Feb. 14, 1849.

CONVEYANCE.—COVENANT FOR QUIET ENJOYMENT.

A recital in a conveyance of heirship does not estop the party from disputing the fact, and a covenant for quiet enjoyment is not restricted by the introductory words.

THIS was an action of covenant tried at the Summer Assizes for Suffolk, in 1847, and in which the plaintiff had a verdict for 900*l.* The declaration set out a deed for the conveyance of some land, in which, after reciting that Ann Hopley died intestate, and left Martha Ann, the defendant's wife, her heiress to the property, there were contained covenants on the part of the defendant, for himself, his heirs, executors, and administrators, and for his wife, her heirs, executors, and administrators, for quiet enjoyment and for further assurance. The declaration then set out, that the plaintiff had been evicted from the premises so conveyed by one Peter Hopley, as heir-at-law of the said Ann Hopley, deceased. In one of the pleas, the defendant averred, that his wife Martha Ann was the heiress of the intestate.

A rule had been obtained, calling on the plaintiff to show cause why a new trial should not be had, on the ground that the recital of heirship in the deed of conveyance was conclusive between the parties, and estopped the plaintiff from denying its truth, and that the covenant for quiet enjoyment was restricted by the introductory words.

The *Court* held, that as the defendant had pleaded the fact of heirship, he must abide by the decision of the jury. As the covenant for quiet enjoyment was a reasonable and usual covenant without the restrictive words, and was quite consistent with the covenant for further assurance, there appeared no reason for restraining the covenant for quiet enjoyment. The rule *nisi* must, therefore, be discharged.

Murray v. *Hall*. Feb. 14, 1849.

TRESPASS.—TENANTS IN COMMON.

One tenant in common can maintain an action of trespass against another tenant in common. Trespass will lie where ejectment can be maintained.

The plaintiff brought an action of trespass against the defendant, for breaking into and entering his house, and ejecting him therefrom, to which the defendant pleaded a denial of the plaintiff's possession. The plaintiff and defendant, it appeared from the evidence given at the trial, were tenants in common of the house. The plaintiff, therefore, obtained a verdict, with 35*l.* damages. A rule had been obtained calling on the plaintiff to show cause why the verdict should not be set aside, and a nonsuit entered, on the ground that one tenant in common could not maintain an action of trespass against the other.

The *Court* said, that (notwithstanding the case of *Cubitt* v. *Porter*, 8 B. & C. 257, and the opinion of *Littledale*, J. therein,) trespass would lie where ejectment did, and it might be sustained where there had been an actual ouster. The rule *nisi* must, therefore, be discharged.

Court of Exchequer.

Harvey v. *Dakins*, (*Clerk.*) Jan. 18, 27, 1849.

PRIEST IN ORDINARY. — PRIVILEGE FROM ARREST.

A priest in ordinary of the Chapel Royal is a servant of the Queen, privileged from arrest in a civil suit.

The defendant had been taken in execution for the debt and costs in this action, by the Sheriff of Devonshire, and applied in the first instance by summons to one of the Barons at Chambers, to order his discharge from custody, on the ground that he was a priest in ordinary of the Chapel Royal, and, as such, privileged from arrest. The summons was dismissed with costs.

Lush afterwards obtained a rule for his dis-

charge on amended affidavits, citing *Byrn* v. *Dibdin*, 1 Cromp., M. and Ros. 821. *Baddeley* showed cause against the rule.

Per Curiam. Whilst the defendant continues to hold the appointment, he is entitled to exemption from arrest, not for his own benefit, but lest at any time the Monarch should require and lose the benefit of his services. The case cited at bar was directly in point.

Rule absolute.

Barrett and another v. *Jermy.* Feb. 12, 1849.

INSURANCE COMPANY.—INCREASE OF RISK. NOTICE.—ONUS OF PROVING.

Rule absolute for new trial, on the grounds that the onus of proof of increase of risk and of no notice given, lay on the Insurance Company, and that it was doubtful in which way the jury intended the verdict to be entered.

In an action against the defendant, (the late recorder of Norwich,) as the chairman of the Norwich Union Fire-office, to recover the amount of a policy effected by the plaintiff in that office on certain buildings in which he carried on the business of a boiler of oil; the defendant pleaded that the plaintiff had effected a change in his trade by introducing the boiling of varnish,—no notice of such change having been given, and no assent endorsed on the policy. At the trial before Wilde, J. C., at Warwick, evidence was given that the plaintiff had removed boilers used in the yard for boiling oil into a room where no manufacturing process was carried on, and had applied them to the purpose of boiling varnish. A fire subsequently took place. The points disputed at the trial were, 1st, whether the risk had been increased by the removal of the boilers, and 2ndly, whether notice had been given of the alteration to the company. It was assumed in the course of the trial, that if notice was necessary to be given, the onus of proving such notice rested on the plaintiffs, and the learned judge in summing up, made a statement to that effect to the jury, who found a special verdict in writing to the effect, that the removal of the boilers did not increase the risk, and that the plaintiffs were not justified in putting in a stove which they had erected, without the consent of the company. The verdict was entered for the defendant.

A rule was afterwards obtained to set aside the verdict, and for a new trial or for judgment *non obstante veredicto*, which was argued for the plaintiffs by *Humfry*, *Hayes*, and *Willes*; and for the defendants, by *Whitehurst* and *Wilmore*.

The *Court* (after taking time for consideration) was of opinion that, upon the pleadings, the burthen of proving that the alteration which was made increased the risk, and that no notification of such alterations was made to the company, lay upon the defendant; and as this was not so left to the jury, there must be a new trial. The Court was also of opinion, that the answers of the jury to the questions put by the Chief Justice, made it doubtful in which way the verdict ought to be entered; and for that reason also, it was proper there should be a new trial. Rule absolute for new trial.

Ricketts v. *Noble.* Feb. 27, 1849.

IMPLIED REPEAL OF THE 43 GEO. 3, C. 46, S. 3.—FRIVOLOUS ARREST.—PRACTICE.

Held, (*Alderson, B., dissentiente,*) *that the act* 43 *Geo.* 3, *c.* 46, *s.* 3, *which gives a defendant his costs, if arrested and held to bail for a larger amount than the plaintiff recovers, is impliedly repealed and rendered inoperative by the* 1 *&* 2 *Vict. c.* 110.

Quære, *whether the* 3*rd section of the* 43 *G.* 3, *c.* 46 *applies, where a defendant is not held to bail, but pays money into Court in lieu of bail?*

The defendant was arrested upon a judge's order, granted under the 1 & 2 Vict. c. 110, for 71*l.*, and paid that sum into Court with an additional sum as security for costs, and the action went on to trial, when the plaintiff recovered the sum of 6*l.* only. The defendant thereupon obtained a rule to show cause why a suggestion should not be entered for his costs, under the 43 G. 3, c. 46, s. 3, which provides, that "whenever plaintiff shall not recover the amount of the sum for which the defendant (without probable cause), was held to bail, defendant shall be entitled to costs under a rule of Court." On the part of the plaintiff it was objected, that as the defendant had not put in special bail, but had paid the amount to the sheriff, together with a sum as security for costs, that section did not apply; and also, that the statute 43 Geo. 3, c. 46, was rendered inoperative by the 1 & 2 Vict. c. 110, which introduced a new system of commencing suits, and abolished the choice which plaintiffs had under the old law, to issue bailable process, and rendered it imperative to proceed by writ of summons, reserving to the discretionary power of a judge to authorize the arrest of the defendants.

Parke, B., in delivering the judgment of the Court, observed, that the latter of the two questions raised in this case was by far the most important, and that the view which a majority of the Court took of it, made it unnecessary to decide the first. A majority of the Court, after much discussion, had come to the conclusion, that the 1 & 2 Vict. c. 110, rendered inoperative the 43 Geo. 3, c. 46, which gave the Court power of awarding costs to a defendant. The judgment of the Court therefore was, that the 43 Geo. 3, c. 46, s. 3, did not apply to an arrest under the 1 & 2 Vict. c. 110. Baron Alderson, however, did not agree with the rest of the Court on this matter, and as the point was new and of some practical importance, it was deemed expedient to give the parties the opportunity of taking the opinion of a Court of Error, and for this purpose the rule would be absolute to enter a suggestion.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Courts of Equity.

LAW OF WILLS.

[For the previous Sections of this Series of the Digest in the present Volume, see

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Bankruptcy, p. 158.]

APPOINTMENT.

Power.—A testatrix, having personal property of her own and a power, under her father's will, to appoint a fund, by deed or will, amongst her brothers and sisters, after directing her debts and funeral and testamentary expenses to be paid out of her personal estate, and giving pecuniary legacies to persons not objects of the power, and a portion of the fund over which she had the power, to persons who were objects of it, bequeathed the residue of "her personal estate after payment of her debts, funeral and testamentary expenses, and the before-mentioned legacies," to two persons who also were objects of the power: *Held*, that the residuary clause was a valid appointment of the remainder of the fund over which she had the power. *Elliott* v. *Elliott*, 15 Sim. 321.

Case cited in the judgment:—Clogstown v. Walcott, 13 Sim. 523.

BEQUEST.

Unbeneficed curates.—Bequest for the benefit of unbeneficed curates, whose annual incomes do not exceed 35*l.*, and to such as shall be recommended in a certain manner, held to comprise two classes,—those having incomes of 35*l.* and under, and also those recommended in the way prescribed. *Pennington* v. *Buckley*, 6 Hare, 453.

BEQUEST BY RECITAL.

Implication.—By a codicil, a testator gave to *A. B.* "500*l.* in addition to 1,500*l.* which he had before bequeathed to him." The testator had previously bequeathed two legacies only of 500*l.* and 500*l.* each: *Held*, that, by implication, the legatee was entitled to 2,000*l.* *Jordan* v. *Fortescue*, 10 Beav. 259.

CHARGE OF DEBTS.

Real estate.—A testator devised certain equitable real estates to his executors, as such, in trust for his wife and children, and bequeathed everything else to his wife, and he stated as follows: "My executors are charged with the payment of my just debts, of which I shall leave an account with the letter to my wife:" *Held*, that the testator's debts were charged on these real estates; and, 2ndly, that the charge was general, and not limited to those enumerated in the account. *Dormay* v. *Borradaile*, 10 Beav. 263.

CHARITABLE BEQUEST.

1. *Chancellor of the Exchequer.*—A bequest of residue "to the Queen's Chancellor of the Exchequer for the time being, and to be by him appropriated to the benefit and advantage of my beloved country Great Britain:" *Held*, to be a good charity bequest.

And *semble*, that the selection of a particular officer of the government as trustee, marks the mode of application sufficiently to preclude the exercise of any discretion on that subject. *Nightingale* v. *Goulbourn*, 2 Phill. 594.

Cases cited in the judgment:—Attorney-General v. Brown, 1 Swan. 265; Attorney-General v. Heelis, 2 Sim. and St. 67; Attorney-General v. Corporation of Dublin, 1 Bligh, N. S. 312; Thellusson v. Woodford, 4 Ves. 227; Newland v. Attorney-General, 3 Mer. 684.

2. *Administration by sign manual.*—It is no criterion of the invalidity of a charity bequest that it is not capable of being administered in this Court; for that is the case in every charity gift which is administered by sign manual: but it *is* a criterion where the question is whether the gift be charitable or not. *Nightingale* v. *Goulbourn*, 2 Phill. 594.

Cases cited in the judgment:—Moggridge v. Thackwell, 7 Ves. 36; Morice v. Bishop of Durham, 9 Ves. 399.

See *Bequest*.

CHILDREN.

Parents' share.—Bequest to testator's wife, of the use and usage of all his effects for her life, and at her death bequest of the same to four nieces by name, to be by them equally divided, share and share alike, and at their deaths to go equally, share and share alike, to their children: *Held*, to give the respective children their parents' share only. *Arrow* v. *Mellish*, 1 De G. and S. 355.

DEVISE.

Conveyance to devisees in trust.—A conveyance decreed from the trustee under a settlement to the trustees under a will, although no heir to the testatrix could be found, and the trust was charged with certain payments out of the estate. *Onslow* v. *Wallis*, 37 L. O. 335.

DEVISE FREE FROM DEBTS.

Liability of residue.—Where the residue of property was bequeathed, not as a specific, but as an ordinary, gift, estates devised in strict entail, and freed and discharged from all debts, were held not to be primarily liable for the pay-

ment of a mortgage debt charged on them, but that the residue was liable after the estates reserved for payment were exhausted. *Lord Brooke* v. *Earl of Warwick*, 37 L. O. 274.

See *Executory Devise*.

DISCRETIONARY TRUST.

A direction by will that the testator's widow shall receive all the income of his real and personal estate, and pay and apply the same to and for the use of herself and the children of their marriage, agreeable and according to her own discretion during her life, confers upon the wife a discretionary power which the Court will not disturb so long as it is reasonably and honestly exercised. *Costabadie* v. *Costabadie*, 6 Hare, 410.

DISTRIBUTION, STATUTE OF.

Circumstances in which shares were held not to belong to executors, but to next of kin. *Smith* v. *Palmer*, 37 L. O. 240.

See *Life Interest*.

EXECUTION OF POWER.

1 *Vict. c.* 26.—A testator, by his will, dated in 1845, gave all his real and personal estate and the effects due to him from the estate of *H.*, amongst his children, and, by a deed of settlement made in 1846, which recited that certain sums had been agreed to be paid to the testator as the portion of the personal estate of *H.* to which he was entitled, a power of appointing those sums among his children and their children, was reserved to the testator, the same to be executed by any deed or deeds, &c., or by his last will and testament: *Held*, on the construction of the will and settlement, and the stat. 1 Vict. c. 26, that the will was a good execution of the power. *Stillman* v. *Wheedon*, 37 L. O. 237.

EXECUTORY DEVISE.

Void for remoteness.—A testator gave his real and copyhold estates to trustees on trust, to apply the rents for the maintenance of *A.*, and his present and future grandchildren, during the life of *A.*, and on the death of *A.*, in trust to convey the same to the use of all his present and future grandchildren, as they should attain 25, as tenants in common: *Held*, that the devise to the grandchildren was void for remoteness. *Blagrove* v. *Hancock*, 37 L. O. 189.

EXONERATION OF PARTICULAR LAND.

A. B., as surety for his two sons, mortgaged a particular property to secure 2,500*l.*, and received a bond of indemnity from his two sons. He devised that property to one of these two sons, and gave the residue of his estate to trustees, upon trust to convert into money, and to pay his funeral and testamentary expenses, and all his debts, and in particular all sums which might become charged upon or payable out of the property bequeathed to his said son: *Held*, that the 2,500*l.* was payable out of the testator's estate, to the exoneration of the principal debtors. *Mushet* v. *Cliffe*, 37 L. O. 8.

GIFT PER CAPITA.

A testator gave his property (all being personalty) to trustees *upon trust* to pay his debts, and he gave certain legacies and three annuities to three ladies, and he gave the residue of the dividends arising during the lives of the three annuitants to *H. S.* and *A. C.*, married ladies, for their lives, and after the deaths of the three annuitants, as to all the rest of his estate, he bequeathed the same to the said *H. S.* and *A. C.*, and their several children, to be divided between them in equal shares: *Held*, 1st, that there was an intestacy as to the surplus income from the death of the survivor of *H. S.* and *A. C.* until the death of the survivor of the three annuitants; and 2ndly, that the gift to *H. S.* and *A. C.*, and their several children, was a gift *per capita* and not *per stirpes*. *Cunningham* v. *Murray*, 1 De G. & S. 366.

Cases cited in the judgment: Bootle v. Blundell, 1 Mer. 237; Bullock v. Stones, 2 Ves. sen. 521; Shaw v. Cunliffe, 4 Bro. C. C. 144; Glanvill v. Glanvill, 2 Mer. 38; Ackers v. Phipps, 9 Bligh, N. R. 430.

HEIR-LOOMS.

Bequest of plate, jewels, and other chattels, by the Earl of Abergavenny to his son Viscount Nevill, and his heirs, Earls of Abergavenny, "to be held as heir-looms," with a direction to the testator's executors to make an inventory of all such chattels and effects; and a subsequent bequest by a codicil, declaring that, in addition to the articles and things he had in his will made heir-looms, certain other articles should be considered and taken to be heir-looms, and bequeathing the same to his executors, "as heir-looms in his family," directing them to make an inventory thereof, and sign the same.

Held, that the gift of the chattels was not executory; that the same vested absolutely in the first taker, Viscount Nevill, who succeeded the testator in the earldom; and that, not having been disposed of by him in his lifetime, the same upon his death passed to his executors.

The addition in the codicil of the words, "in my family" gives rise to no distinction in point of construction.

If the gift had been executory, inasmuch as there was the dignity, the family estate, and the purchased estate, and it was not certain, upon the language of the bequest, to which the testator would annex the chattels, the conclusion would have been the same—*Semble*. *Rowland* v. *Morgan*, 6 Hare, 463.

Cases cited in the judgment: Gower v. Grosvenor, Barn. Ch. R. 54; 5 Madd. 337; Foley v. Burnell, 1 Bro. C. C. 274; Vaughan v. Burslem, 3 Bro. C. C. 101; Duke of Newcastle v. Countess of Lincoln, 3 Ves. 387; 12 Ves. 218; Carr v. Lord Errol, 14 Ves. 478.

LAPSE.

Next of kin.—Under a gift of residue to the testator's wife for life, to her separate use, with

an absolute power of appointing the principal by deed or will, and a gift, in default of such appointment, to her next of kin as in case of intestacy: *Held*, that the gift of the principal had not lapsed by the death of the wife in the testator's lifetime, but that her next of kin, according to the statute, were entitled to the benefit of it. *Baker* v. *Hanbury*, 3 Russ. 340, overruled. *Edwards* v. *Salaway*, 2 Phill. 625.

LEGACY.

Interest.—A testator having an estate subject to a mortgage bearing interest at 5 per cent, devised it to B., "he paying the mortgage thereon;" and he bequeathed to the mortgagee, through his executor, 2,000*l.* to exonerate the estate. The mortgagee foreclosed, and it having been decided that the devisee was entitled to the 2,000*l.*, it was held that he was entitled to interest thereon after the rate of 3, and not 5 per cent. *Lockhart* v. *Hardy*, 10 Beav. 292.

LIFE INTEREST.

Reddendo singula singulis.— Distribution.—A will contained a devise of realty, in trust for *A.* for life, remainder to *B.* his wife, for life, and after the death of the survivor, to sell and divide the proceeds equally among the children, whose shares were to be vested at 21 for sons, and 21 or marriage for daughters, with a proviso postponing payment in the event of any shares vesting in the lifetime of either tenant for life. The will also contained a bequest of stock, in trust to pay the dividends to *A.* for life, and, on his death, to divide the principal among his children equally, the shares to vest at the same times as were before provided as to the proceeds of the realty; and there was a proviso that, in the event of there being no child of *A.* and *B.*, or all the children dying before 21, or, if daughters, before that age or marriage, the proceeds of the realty and the sum of stock should be divided equally among the members of a defined class of persons who should be living at the death of the survivor of *A.* and *B.*, or *A.*'s children or child, as according to the trusts thereinbefore declared the case might require: *Held*, that the last of these clauses must be read distributively, and that it did not give to *B.* by implication a life interest in the stock. *Drew* v. *Killick*, 1 De G. & S. 266.

Cases cited in the judgment: Wyndham v. Wyndham, 3 Bro. C. C. 58; Shaw v. Cunliffe, 4 Bro. C. C. 144; Harris v. Lloyd, Turn. 310.

NEXT OF KIN.

See *Lapse; Distribution, Statute of.*

POWER.

See *Appointment; Execution of Power.*

REMOTENESS.

A testator devised his real estate in strict settlement, subject to a term of 2,000 years, limited to trustees for raising 500*l.* a year, and accumulating it as a sinking fund for payment of his mortgage debts, &c., to a considerable amount: *Held*, that the trust, though unlimited in its duration, was valid. *Bateman* v. *Hotchkin*, 10 Beav. 426.

See *Executory Devise.*

RESIDUE.

1. Certain directions contained in two codicils to testator's will, *held* to amount to a constructive disposition of the residue of his real and personal estate, reversing the decree of the Court below. *Hodgkinson* v. *Barrow*, 2 Phill. 578.

2. A testator bequeathed an annuity to *D.*, and to *A.*, *B.*, and *C.*, his residue, to be equally divided, &c.; except the Swansea canal shares, which were not to be sold till after the death of *D.*: *Held*, that the Swansea canal shares passed by the residuary gift. *James* v. *Irving*, *James* v. *Gronow*, 10 Beav. 276.

See *Devise free from Duty; Trustee*, 2.

SPECIFIC BEQUEST.

1. *Chargeable with debts.—Prior applicability of general residue.*—A testator bequeaths specific chattels charged with the payment of a pecuniary legacy, and of all the testator's just debts and funeral and testamentary expenses, and he bequeaths other specific and pecuniary legacies, but makes no residuary bequest: *Held*, that notwithstanding the charge, the general undisposed of residue was first applicable. *Hewett* v. *Snare*, 1 De G. & S. 333.

2. *Payment of debts.—Rent of personal estate.*—A testator directed all his debts, in the first place, to be paid out of his personal estate, except his leaseholds, if sufficient, and if not, he charged his real estate therewith: *Held*, that the specific legacies were liable to the payment of the debts in priority of the real estate. *Bateman* v. *Hotchkin*, 10 Beav. 426.

STAMP.

Probate.—A plaintiff sued to recover a large unliquidated sum due to her testatrix, but the stamp on the probate did not cover the amount claimed: *Held*, that the plaintiff could not obtain a decree even for accounts and inquiries, until the probate had been properly stamped. The cause stood over, and the commissioners stamped the probate and gave credit for the duty. *Howard* v. *Prince*, 10 Beav. 312.

TENANT FOR LIFE.

Enjoyment of personalty in specie.—Residuary devise and bequest on trust to pay the dividends, interest, and annual produce of the testator's real and personal estates, to the separate use of his daughter or daughters for life, and after her or their decease, to pay, transfer, and equally divide the whole of his real and personal estate among the issue of his daughter or daughters; and for want of such issue to pay certain legacies, and to sell the residue of the real and personal estate not consisting of money: *Held*, to entitle the tenant for life to the enjoyment of the personalty *in specie*. *Hunt* v. *Scott*, 1 De G. & S. 219.

Cases cited in the judgment: Alcock v. Sloper, 2 M. & K. 699; Collins v. Collins, 2 M. & K. 703.

TRUST FUNDS.

Trustees Relief Act, 10 & 11 *Vict. c.* 96.—Testator gave 2,000*l.* to trustees, in trust for such of his nephews and nieces as should be living at his wife's death, and the issue of such of them as should be then dead. Upon the wife's death, the trustees paid the 2,000*l.* into Court, under the 10 & 11 Vict. c. 96. Afterwards a petition was presented by certain persons, claiming shares to the amount of the 2,000*l.*, being the issue of a deceased nephew of the testator, and praying to have those shares paid to them. The Court, notwithstanding the petitioners submitted to bear the costs of the inquiries necessary to ascertain their title, considered that those costs ought to be borne by the testator's estate; and also that the petitioners might be entitled to interest on their shares; and, therefore, it directed the inquiries, but without prejudice to the petitioners' right to file a bill; and it reserved the consideration of costs, and ordered the trustees to be served with the order. *In re Sharpe's Trustees*, 15 Sim. 470.

TRUSTEE.

1. Upon a transfer to trustees of a fund bequeathed to them upon trust, to pay the interest to a tenant for life, without any bequest of the corpus, or with a bequest thereof of doubtful validity, and which upon construction might fail, so that the corpus would ultimately become part of the residuary estate, the trustees of the fund are not, *ipso facto*, trustees for the residuary legatees or the next of kin, but the corpus of the fund must be regarded as assets of the testator's estate unadministered, ultra the life estate. *Pennington* v. *Buckley*, 6 Hare, 451.

2. *Residue*—The circumstance, that the residue of an estate (omitting the fund vested in trustees for the tenant for life) has been administered in equity does not affect the principle; nor is it less applicable, because from the time which has elapsed since the death of the testator, the executor is not a necessary party in the administration of the particular fund, and has not been made a party to the suit. *Pennington* v. *Buckley*, 6 Hare, 451.

Case cited in the judgment: Loy v. Duckett, Cr. & Ph. 305.

3. *Discretionary power.*—Where the disposition of a trust estate amongst certain objects is made by the author of the trust to depend upon the discretion of the trustee, the Court will, in a proper suit, inquire into the manner in which the trust has been administered, and require that such discretion shall be fairly and honestly exercised; and so long as it appears to be so exercised, the Court will not deprive the trustee of the discretionary power which he possesses, or assume itself the exercise of the power; but to avoid a repetition of suits where there is reason to apprehend that the conduct of the trustee may be liable to question, the Court may require the discretion of the trustee to be exercised under its view. *Costabadie* v. *Costabadie*, 6 Hare, 410.

See *Discretionary Trust.*

BUSINESS OF THE COURTS.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER HILARY TERM, 1849.

Court of Exchequer.

Middlesex.

Milne and Co.	Steiner	S. J.	Heald and others	Case, Hill and Heald
T. Martin	Broom	S. J.	Eastern Counties Railway and another	Tres. Duncan
Bell, B., and Co.	Holmes	S. J.	Ralli	Pro. Crowder and M.
White and Co.	Doe d. Dean and Chapter of Westminster	S. J.	Campbell, clk., and ors.	Ejt. Pitman
A. Mayhew	Hardy	S. J.	Tingey	Trov. Harrison and D.
Westmacott and Co.	Long	S. J.	M'Cleane	Pro. Benbow
C. W. Wilson	Whitaker		Head	Pro. J. R. Hudson
Holme and Co.	Nottidge	S. J.	Ripley and another	Tres. Crowder and M.
Same	Same	S. J.	Ripley	Pro. Same
C. Barnard	Davey (pauper)		Budden	Ca. Watson
J. Clapperton	Pugh		Lane	Pro. Phillips
J. Humphreys	Reading		Cubitt and another	Ca. Burchell and H.
J. P. Davis	Arber	S. J.	Lewis	Pro. Gregory and Co.
Bickley	Gibson		Blunt	Tres. Lakes
Bisgood	Greenland	S. J.	Chaplin	Ca. Cattarns
Atkinson and Co.	Dawson and another		Rt. Hon. G. R. Dawson]	Dt. Husband and H.
E. Towsey	Ronconi		Beale	Pro. Appleby

Dimmock and B.	Goding		Cole	Dt. Underwood
H. Weeks	Bond	S. J.	Radcliff	Pro. Westmacott and Co.
De Medina	Skinner	S. J.	London, Brighton, and South Coast Railway	Ca. Sutton and Co.
White, Eyre, and W.	Sandford and another	S. J.	Fussell	Pro. Poole and G.
B. Price	Cherry		Heming and another	Cov. Vallance, Ivimey, &
Eyre	Eyre		Smith	Dt. Lewis [Co.
G. Smith	Doe d. Smith		Hoare and others	Tres. & Eject. T. Weston
Lake and Co.	Collins, clerk	S. J.	Collins	Pro. Robinson and Co.
Johnston and Co.	Wills		Robinson	Covt. Amory and Co.
Smith and A.	Jones	S. J.	Bryant	Pro. G. Waller, jun.
F. A. Lewis	Crouch	S. J.	London and North Western Railway	Pro. Parker and Co.
J. P. Davis	Edwin	S. J.	Simmons	Dt. Wire and Co.
C. F. Chubb	Mayhew		Horder	Tro. H. Corper
T. G. Phillpotts	Fowler		Collins and another	Ca. Parkinson
Raw	Bailey and others		Williams	Pro. White and Co.
Wilkin	Speed		Newman	Ca. Joyes and Co.
L. Raphael	Barlow and another		Eiffe	Pro. W. H. Rymer
Parker and Co.	Ford		Sworder, jun.	Pro. Trinder and E.
Hardwick and D.	Phillips and another	S. J.	Grinder and others	Pro. Boulton
Casley	Lazarus		Bath and another	Ca. Pope
Isaacson and A.	Foster and others		Delahay	Dt. F. Asprey
Flavell	Pratt		Fletcher	Ca. Parker and Co.
Futvoye and S.	Broadwood and others		Robins	Pro. In person
L. H. Braham	Mizen		Goddard and another	Tres. Paine and H.
Same	Batley		Shaw	Pro. Tribe
C. G. Jones	Leeson	S. J.	Earl of Chesterfield	Dt. C. H. Clarke
Jaques and Co.	Seller		Rigby	Pro. I. Nixon
Cree and Son	Chinery		Clements	Dt. Nettleship
Gregory F. and Co.	Gregory and ors.	S. J.	Miller and others	Pro. Elmslie and P., Miller and Horn
J. T. Moss	Hollingworth		Heigham	Pro. Silvester
Gadsden and F.	Simonds	S. J.	Pigott	Dt. G. H. Lewin
Same	Simonds and another	S. J.	Pigott	Dt. Same
Loveland and B.	Blakeburn		Willmett	Dt. White and Eyre
Same	Herring	S. J.	Klemen	Pro. G. H. Taylor
D'Breese	Crozier and another		Hutchinson	Dt. Bell and Co.
G. H. Taylor	Leeson		Tyrer and ux. admix., &c.	Dt. I. Barber
G. Knox	Nix		Thompson	Dt. Finney
Church and L.	Doe d. Lewis and another		Warner	Ejt. Webber
Bridges and Co.	Westminster Improvement Commissioners		Fuller	Pro. Fuller and S.
J. H. Vaughan	Bryant and ux.		Unwin	Pro. Robinson
J. Evans	Evans		Marsden	Pro. Lewis and L.
James and Son	Owlett	S. J.	Mayor, Aldermen, and Citizens of the City of Rochester	Rep. Wright and R.
Hornidge	Prosser		Lee Warner	Trov. Cook
J. A. Jones	Smith and others		Herbert	Pro. Watson and B.
W. White	Maguire		Killarney and Valentia Railway	Ca. Elmslie and B.
S. Smith	Cook		Shepherd	Dt. Wright and R.
T. Philpot, jun.	Vickers		Birch	Dt. In person
Currie and Co.	Glenie	S. J.	Baron de Delmar	Pro. Wilde and Co.
S. B. Abrahams	Harris	S. J.	Cobb	Bisgood

London.

Crowder and M.	Tarte	S. J.	Barnes	Pro. Young and Co.
Tatham and Co.	Hill	S. J.	Taff Vale Railway	Covt. Hunts
Symes and Co.	Doe dem. Pedley	S. J.	Ferguson	Ejt. Davies and Co.
Fry and Co.	Patent Galvanized Iron Company	S. J.	Santamaria	Pro. Crowder and M.
Wadeson and M.	Langlois, jun.	S. J.	Reid, Bart., and others	Trov. Same
T. Walker	Stockton and Darlington Railway Co.	S. J.	Fox, Esq.	Pro. G. S. Ford
Miller and C.	Jones and another		Clements	Pro. Messrs. Hyde
Tilson and Co.	Bussey, exor.		Ellerton	Pro. T. H. Dixon
Phillips and Son	Pegler and anr.	S. J.	Hislop	Pro. Todd
Chatfield and Co.	Ridge	S. J.	Gibbons	Dt. H. Lloyd
In person	Towse	S. J.	Henderson and another	Pro. W. H. Cotterill
Colley	Chapman and ors.	S. J.	Reeves	Dt. Tatham and Co.
T. Tyrrell	Betts	S. J.	Wyche	Pro. In person
Bird and M.	M'Kellar	S. J.	Harris	Ca. Walsh

Bisgood	Chapman	S. J.	Western Gas Light Co.	Pro. Phillips and Son
R. Ellis	Gibson and Ryan	S. J.	Ryan	Pro. Messrs. Gole
W. Hartley	Rennie	S. J.	Rennie	Dt. Symes and Co.
Rhodes and Co.	Brown and others, assignees	S. J.	Shotton	Pro. Boults
E. A. Chaplin	Briggs and another		Attwood and another	Covt. Rixon and Co.
M'Leod and S.	Follett and others, assignees, &c.	S. J.	Levy	Pro. Taylor and C.
Symes and Co.	Rennie and others		Rennie	Dt. Walton
W. Harris	Pope and another	S. J.	Peabody	Pro. Oliverson and Co.
J. H. Benbow	Whitcomb and anr.	S. J.	Stothert and others	Pro. Hornby and T.
Ashurst and Son	Pare	S. J.	Atwood	Pro. Rixon and Son
Tatham and Co.	Turnbull	S. J.	Reid, Bart., and others	Cov. Crowder and M.
Norton and Son	Dawson	S. J.	Wrench	Pro. Tatham and Co.
Malton	Burton	S. J.	Morrison	Pro. Bevan and G.
Ashurst and Son	Pare	S. J.	Spooner, Esq.	Pro. Maples and Co.
Donne and T.	Haynes and others	S. J.	Brown	Ca. Hume and B.
Cox and Sons	Cohn		Fawcett and others	Tress. Crosby and C.
Sharpe and Co.	Gladstone and anr.	S. J.	Sharp	Pro. Gregory and Co.
M. Thompson.	Edgcomb and anr.	S. J.	Bonsor	Pro. W. Malton
E. Manby	Shipton	S. J.	Larnder	Ca. Teague
White, Eyre and W.	Croome	S. J.	Fairbairn and others	Dt. Keigthley and Co.
Oliverson and Co.	Sampson and ors	S. J.	Young and others	Pro. Druce and Sons
W. Justice	Hewitt	S. J.	Russell and others	Pro. J. Matthews—T. Lott
J. B. May	Bateman		Little	Dt. R. P. Games
M. Fraser	Overton		Truman	Pro. E. Isaacs.
Johnston and Co.	Newport, Abergavenny, & Hereford Railway		Brown	Dt. Newbon and E.
Same	Same		Addis	Dt. Same
Todd	Cannan and another, assignees, &c.		Moor	F. Issue, Messrs. Langham
R. Ellis	Page and another		Hodgson	Pro. Hensman
A. Duncan	Jones, sen., and another		Payne	Dt. Fiddey.
W. J. Penkivil	Beer and another		Moore	Dt. Baker and Co.
Rains	Dow		Bell	Pro. Pollard
Teague	Strother		Clark	Tro. In person
Hill and M.	Nash		Lunham and another	Dt. C. B. Wilson
Maples and Co.	Graham and others, assignees	S. J.	Oliver	Pro. Oliverson and Co.
Boyle	Magnus		Tozer	Dt. Humphreys
Spyer	De la Rue and others		Miltborp	Dt. Clarke
J. E. Fox	Laroche, jun.		Bessell	Dt. Trehern and W.
Wilkinson and G.	Rhodes, P. O., &c.		Tuer	Dt. Tripp
Same	Rhodes, Esq., P. O.	S. J.	Gibson	Sci. fa. Maples and Co.
T. Tyrrell	Londonderry and Coleraine Railway	S. J.	Bloxam	Dt. Boucher
Pickering and Co.	Brymer and others, assignees, &c.		Thames Haven Dock and Railway Company	Covt. Venning and Co.
Rhodes and Co.	Lafone and another	S. J.	Ellis	Pro. Walton
R. Hodgson	Lawson and others	S. J.	The Star Fire Insurance Company	Pro. Reece
B. Granger	Hornsby		Wilson	Pro. Helder
Philipps and V.	Harrison		Nott	Dt. Thompson and D.
D'Breese	Taylor	S. J.	Bullen	Ca. Cotterrill
G. Fry	Reed		Watling	Ca. Rosson
Maples and Co.	Great Western Railway		Budd and others	Pro. Darke
W. J. Holt	Holt		Wilton, sen.	Covt. W. H. Sadgrove
Same	Same		Wilton, jun.	Covt. Same
W. Murray	Fox and others		Western Gas Light Co.	Dt. Phillipps and Son
R. Ellis	De Horne	S. J.	Bishop	Harwood
Van Sandau and C.	Mallan and another		Pack, admor.	Pro. Walker and Co.
Same	Willey		Parratt and others	Pro. Pontifex and M.
Bridges and C.	Armstrong		Crozier	Dt. Fry and Co.
Parker and Co.	Shropshire Union Railway and Canal Company		Coode	Dt. G. Vincent
Same	Same		Hodgson	Dt. Same
Same	Same		M'Gregor	Dt. Same
Same	Same		Anderson	Dt. Same
Gregory, F. and Co.	Makinson		Willetts	Pro. Chester and Co.
W. W. Jackson	Richards		Scott	Pro. W. H. Smith
Bridger and C.	Lankester		Lighton	Dt. Gidley
Bridges and Co.	Rogers		Evans and another	Dt. J. Fallows—J. Rew
Sweeting and B.	Cababé		Hawa	Ca. Oliverson and Co.
Dimmock and B.	Goding and another	S. J.	Abrahams	Dt. Dale
E. Moss	Hogg		Durrant and others	Pro. C. Bell

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 7, 1849.

"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."
HORAT.

BANKRUPT LAW CONSOLIDATION BILL.

It requires the exercise of no ordinary diligence and industry to follow, and become acquainted with, the various alterations which this measure has undergone in its progress through the House of Lords. Within forty-eight hours after the remarks which appeared in our last number were in print, a fresh edition of the bill, "as amended by the Select Committee," was put into our hands, introducing various modifications and effecting several very important changes in the measure the provisions of which had suggested the observations then submitted to our readers.

The Select Committee have, it appears, made one change in the bill which has our unqualified approval, by striking out altogether the division relating to the distribution of the assets of deceased debtors under the superintendence of the Court of Bankruptcy. That the subject is well deserving of consideration, and that the existing state of the law in reference to it may require legislative interference, is freely conceded; but the Court of Chancery—not the Court of Bankruptcy—is the tribunal in which the assets of deceased debtors ought to be administered; and we hope to see the noble and learned Lord at the head of the Court of Chancery turning his attention to the establishment of a system which will render the Court over which he presides practically available for this purpose, at a moderate expense to suitors and without unnecessary delay.

The alteration which strikes us as next in importance to the omission of the chapter relating to deceased debtors, is the omission of the article by which it was proposed to establish a Court of Review consisting of a chief and two other Judges, in substitution of the appeal to the Vice-Chancellor.[a] According to the bill as it at present stands, the appeal is to be continued as at present to the Vice-Chancellor sitting in Bankruptcy, under the act 10 & 11 Vict. c. 102. Although the idea of a Court of Review has been abandoned, the bill still proposes that there should be a "Chief Commissioner,"—for the title of *judge* is dropped in this bill—who is to have a salary of 500*l.* per annum beyond his brother Commissioners. When it was intended that there should be a Court of Appeal, consisting of three judges, it was obviously desirable that one of the members of the Court should have a permanent rank above the others; but as there is not to be a Court of Review in Bankruptcy, we are at a loss to conceive why it has become necessary to have a "Chief" Commissioner, and we find no article in the bill defining his peculiar duties.

Of far greater importance, however, is the retention of the clauses, to which we once before called attention, giving the Commissioners in Bankruptcy, for the first time, a *criminal* jurisdiction, and empowering them to sentence a bankrupt, who appears to the Court to have been guilty of certain specified offences, to imprisonment

[a] See the article printed, *ante*, p. 326.

for any term not exceeding one year, or two years, according to the circumstances. This formidable power was rendered much less objectionable, in our view, by giving the bankrupt a right of appeal to the chief and two other Commissioners; but as the bill is now framed, no appeal is given to a bankrupt who considers himself aggrieved by a harsh or unmerited sentence. It may be said, that the Insolvent Commissioners exercise an authority which operates as a sentence of imprisonment in respect of insolvent debtors, namely, a power of remanding to custody. But it seems to us that there is a very substantial distinction between refusing to discharge a person already in custody under the operation of a well-understood law, and sentencing a party to imprisonment for a lengthened period who has never before, perhaps, seen the inside of a gaol. The novel character of some of the offences which it is proposed to visit with imprisonment, furnishes an additional reason why this portion of the bill should be jealously considered. In the list of what may be called minor offences, the supposed commission of which gives the Commissioner the power of imprisonment "for any term not exceeding one year," we find the following (pp. 107 and 108):

"Second.—If the bankrupt shall at any time after his bankruptcy, or at any meeting of his creditors holden within two months next preceding his bankruptcy, have wilfully prevented or withheld the production of any book, paper, deed, writing, or other document, relating to his trade, dealings, or estate.

"Third.—If the bankrupt shall, during his trading, or for one year at least next preceding his bankruptcy, have omitted to keep proper books of account, or shall have kept his books imperfectly, carelessly, and negligently, and so as not to exhibit at the bankruptcy the real position of the bankrupt as to his debts and credits.

"Fourth.—If the bankrupt shall have omitted to take stock, and enter the same in a book or on paper in writing, once at least during every — years of his trading.

"Fifth.—If the debts, claims, and demands proveable under the bankruptcy shall, from time to time, as such debts, claims, and demands were contracted, have so greatly exceeded the means of the bankrupt to provide for the due payment or satisfaction thereof, (regard being had to his actual and expected property,) as to show gross misconduct in the bankrupt as a trader in contracting the same.

"Sixth.—If the bankrupt shall, in his conduct as a trader, at any time after his bankruptcy, or within twelve months next preceding his bankruptcy, have wilfully committed or suffered any act which, in the opinion of the Court, shall not amount to any offence above specified in this act, but which, nevertheless, shall appear to the Court to have been committed or suffered by the bankrupt in violation of good faith, or with intent to defraud or injure some one or more of his creditors."

The sweeping offence which is described above as the sixth, is meant, we presume, to be framed after the model of what is called "the discretionary clause" in the Insolvent Debtors' Act, 1 & 2 Vict. c. 110, s. 76, but a comparison of the two provisions will show, that the model has not been closely followed. Without entering into a minute examination of the proposed enactment, we may observe, that those on whom the duty is to devolve, of carrying it into effect, will certainly not be placed in the most enviable position. Every man engaged in trade is liable to become bankrupt, and those who are familiar with the habits and circumstances of the class known as small tradesmen, well know how often persons falling under that denomination, without any moral depravity or evil intention, neglect to keep "proper books of accounts," or "to take stock." To visit such persons with punishment as criminals, and this without the intervention of a jury, or the power of appeal, would tend to confound the distinctions between right and wrong; and cause the bankrupt laws to be considered rather in the light of a scourge than a protection. We hope to see this portion of the bill materially modified, or the clauses struck out altogether. The responsibility of administering such a law ought not to be left to the discretion of any individual.

The new bill introduces various changes in matters of detail, to some of which we may hereafter advert, and we observe that by article 6, p. 11, it is contemplated to reduce the number of town Commissioners from six to four, "upon the next two occasions of a vacancy in the office of any Commissioner," from which we infer, that those who framed the present bill, did not anticipate that the proposed changes would have the effect of increasing the business of the Court of Bankruptcy. If it were expected that the labours of the Commissioners would be augmented, it could hardly be deemed expedient to diminish their number!

The number of traders becoming bankrupt unfortunately does not diminish, and the proposed reduction of the judicial staff, seems like an acknowledgment, that the existing Court cannot be rendered effective.

Other parts of the bill, such as the clauses relating to fraudulent preferences, also require attention.

ATTORNEYS ACTING AS ADVOCATES IN BANKRUPTCY.

The legal rights of attorneys and solicitors to appear and plead in any proceedings in the Court of Bankruptcy without being required to employ counsel, was established by the 1 & 2 Wm. 4, c. 56, s. 10, as our readers are aware, so far as relates to the London Court of Bankruptcy; but it was supposed that the right did not extend to the District Courts of Bankruptcy in the country, which were subsequently established under the 5 & 6 Vict. c. 122.*

We doubted this construction of the acts, particularly in reference to the 6 & 7 Vict. c. 73, s. 27; but all question on the subject will be removed by the Bankrupt Law Consolidation Bill, now before the House of Lords, in which it is provided, that every solicitor of the Court of Chancery heretofore or hereafter duly admitted as a solicitor of the Court of Bankruptcy, in manner directed by the 6 & 7 Vict. c. 73, and subject to the provisions of the same act, may appear and plead in any proceedings in the Court, without being required to employ counsel.

The bill also provides, that in case any person not being such solicitor shall practise in the Court as a solicitor, he shall be deemed guilty of a contempt of Court, and be liable to all the penalties incidental thereto.

The several Law Societies will, no doubt, take into consideration whether these enactments will be sufficiently comprehensive to protect the rights and interests of practitioners, which will be found identical with those of the public.

Our readers will recollect, that a few months ago we had a controversy with a writer in the *Law Review* on the question, whether the Attorneys and Solicitors' Act (6 & 7 Vict. c. 73), had not in effect repealed this 10th clause of the Bankruptcy Court Act. In the subsequent number of our learned contemporary, we do not find the opinion reiterated, and may infer that our answer has been deemed sufficient. However that may be, the question, we trust, will be settled by the new Consolidation Act. That measure is manifestly intended to improve the remedies of creditors at as little expense as possible.

Now it is clear that a creditor who can be represented in the Bankruptcy Court by his solicitor, will, in nineteen cases out of twenty, attain his object, whether to prove or oppose a debt, or to examine a bankrupt, at a moderate expense compared with that of employing counsel. And as observed by the correspondent before referred to, the duties of a solicitor in bankruptcy are for the most part *ministerial*. He has to conduct the opening of the fiat, the appointment of assignees, the proof of debts, including numerous and minute discussions on the bankrupt's affairs, not only with the Commissioner and the Registrar, but with the official and trading assignees, and different classes of creditors, &c., for all which the solicitor is well prepared, but on which it would be impracticable sufficiently to instruct counsel, at all events without much delay and expense.

The *public interest*, therefore, is indisputably concerned in continuing the services of solicitors in these courts. Where questions of great importance arise, they will of course employ counsel. The solicitor is justified in matters of magnitude and difficulty to avail himself of the best assistance which the learning and experience of the Bar on the questions at issue may afford.

Of all the propositions which we have heard, that is the most absurd which would have the effect of compelling the public to employ a member of the bar on every occasion in which the office of advocate is to be in any way exercised before any tribunal, however humble, and on every occasion, however trifling; in fact, that the mouth of the attorney should be altogether shut, and that he should be reduced to little higher than the condition of a clerk, except that he may advance the fees out of his pocket, and run the risk of losing them. This can never be, and the learned gentlemen who have mooted this point should be content with the assurance that on every occasion when the circumstances of the case will justify it, they will be duly retained and instructed.

* See an able letter on this subject from a solicitor at Liverpool, page 144, *ante*.

ROOMS FOR SOLICITORS IN THE PALACE OF WESTMINSTER.

A memorial was presented by the Incorporated Law Society, to the Lords of the Treasury, some years ago, when the plans for the new Houses of Parliament were under consideration for the accommodation of attorneys and solicitors attending Parliament or the Superior Courts when sitting at Westminster.

It appears that the memorial was favour-

ably entertained, for in a return to the House of Commons, ordered, on the motion of Mr. Hume, on the 23rd March, 1843, an account was rendered of "the total amount voted for building the New Houses of Parliament, with an estimate of the further sums that will be required to complete the buildings," the following item appears in the additions to the estimate:—

"For providing additional accommodation for attorneys, as recommended by the Law Society . . . £5,000."

We understand that the application has been recently renewed by the Society, and it appears that the arrangement has not been lost sight of, and in due season the rooms will be ready for professional use, and from their convenient situation will be available as well for those who are in attendance upon the Courts as on the Houses of Parliament.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

APPOINTMENT OF OVERSEERS OF POOR.

12 VICT. c. 8.

An Act to remove Doubts as to the Appointment of Overseers in Cities and Boroughs.

[22nd March, 1849.]

DOUBTS having been entertained as to the proper authority for the appointment of overseers of the poor of the parishes comprised within certain cities and boroughs under the provisions of the 43 Eliz., c. 2, intituled "An Act for the Relief of the Poor," and it is therefore enacted—

1. That in every city, town corporate, or borough, the justices of the peace having jurisdiction therein shall have the exclusive right of appointing the overseers of the poor of the several parishes, townships, or other places separately maintaining their own poor, or of any parts thereof, within the said cities, towns corporate, and boroughs respectively, in like manner and with the same effect as the justices of any county now have in respect of the overseers of the poor of any parish within such county, and they are hereby required from time to time to make such appointments accordingly.

2. That so much of the said act as renders the mayor, alderman, and head officer of any city, town, or place corporate liable, upon the default of the nomination of overseers therein, to lose and forfeit for every such default 5*l.*, shall be and the same is hereby repealed.

3. That the appointments of any overseers of the poor in such cities, towns corporate, or boroughs heretofore made by justices of the peace therein, without the concurrence of the mayor or other head officer thereof, shall be deemed and taken to be valid, and that every rate or assessment made or to be made, and every other act and thing done or to be done by any overseers so appointed, shall, if otherwise lawful, be valid for all purposes.

4. That this act shall not apply to the city of London, nor to any of the parishes comprised therein, nor to the appointment of the overseers of any parish, township, or place where such appointment is regulated by the provisions of any local act.

ANTIQUITY OF COUNSEL AND SCHOOLS OF LAW.

[From Mr. Foss's "*Judges of England.*"]

"IN Bracton, the practitioners of the law are termed counsel, pleaders, and advocates;[a] and Matthew Paris in speaking of them says, that they were vulgarly called 'Banci Narratores.'[b]

"The latter title is used in the memorandum of a complaint made 'on Wednesday after the feast of St. Martin,' 52 Henry III., by Robert de Fulham, justice of the Jews, to the treasurer and barons of the Exchequer. He stated that as he went into Westminster Hall on business relating to his office, Robert de Colevill, 'Narrator de Banco,' came and put violent hands upon him, taking him by the breast; and he prayed that amends might be done to him, he and his brother justices being 'de gremio Scaccarii.' The contumacious Narrator was brought before them, and at the instance of his brother 'Narratores,' the matter was accommodated by the offender coming 'before the treasurer and barons, and before Gilbert de Preston and Roger de Messenden, justices of the bench then sitting in the Exchequer,' his tunic ungirt, and head uncovered, and placing himself at the will of the insulted justice, as well in life and limb as in lands, tenements, goods, and chattels; whereupon the transgression was remitted and the offender admitted 'ad osculum,' to the kiss of peace.[c] This Robert de Fulham seems to have been disgraced in the following reign for malversation in his office.[d]

"The first instance occurs in this reign of an advocate being regularly employed on the king's affairs. During fourteen years, from 38 to 52 Henry III., between thirty and forty cases in the court are recorded, in which Lawrence del Brok pleads for the king, 'sequitur pro rege.' In the latter year he was raised to the bench.[e]

"That schools were established in London for instruction in the laws of the kingdom before 19 Henry III. appears from a strict mandate then issued by King Henry to the mayor

[a] Pearce's Inns of Court, 12.
[b] Serviens ad Legum, 260.
[c] Madox's Exch. i. 236.
[d] Ibid. i. 361.
[e] Abbrev. Placit. 129—174; Excerpt. e Rot. Fin. ii. 467—469.

and sheriffs of that city prohibiting their continuance.[f] There is nothing that seems to warrant the suggestion which has been made, that the king's object in suppressing them was to encourage the establishment of Inns of Court in the suburbs; although it might probably lead to it: but it more likely arose from a political motive, and a wish to discourage the study.

"The palace, now called Lincoln's Inn, was built in the early part of this reign by the chancellor, Ralph de Neville, Bishop of Chichester, and was appropriated by him for the town residence of his successors in that see. The place in which it is situate was called New Street, but afterwards, from him, Chancellor's Lane; now converted into Chancery Lane. The name of the bishoprick is still preserved in that part of the estate called Chichester Rents, which perhaps formed part of 'the garden which was John Herleycum's *in* VICO NOVO *ante Novum Templum*,' granted to the bishop on May 2, 1226, 10 Henry III.,[g] by his royal master."

SEVENTH REPORT OF THE COPYHOLD COMMISSIONERS.

Copyhold Commission, Nov. 27, 1848.

SIR,—We have the honour of presenting to you our Seventh Report, and annexed List of Enfranchisements and Commutations which have been completed since our last Report, or which are now in an advanced state.

In submitting these results to you, we have to remark that the uncertainty in the public mind as to whether any and what compulsory measure will be passed by the legislature, acts as a serious obstruction to the progress of voluntary enfranchisement.

It will continue so to act till all uncertainty on the subject is removed.

Whatever compulsory measure might be entrusted to us, we should feel it our duty to do our best to work usefully and tranquilly.

We feel it however, with reference to one plan rather extensively patronized, equally our duty to express to you distinctly our complete conviction that it will not be found practically possible to carry out any measure which contains provisions for the general and immediate exaction of considerations for compulsory enfranchisement from persons not joining in applications to enfranchise.

We have the honour to be, Sir,
Your obedient and faithful servants,

WM. BLAMIRE,
T. WENTWORTH BULLER,
RD. JONES.

The Right Hon. Sir G. Grey., Bart., M.P.,
&c. &c. &c.

[f] Coke's Second Inst. Proeme.
[g] Rot. Claus. i. 109.

FRAUDS ON THE STAMP REVENUE.

TRANSFERS OF SHARES.

The Commissioners of the New Board of Stamps, Taxes, and Excise, now called "The Inland Revenue Commissioners," have issued a notice or caution, from which it will be observed, that there is a heavy penalty upon attorneys and solicitors employed in preparing transfers of shares, when the full consideration is not set forth. The pecuniary penalty one would have thought might have been deemed sufficient without the disability of future practice. The following is the "Caution:"

"It being understood that, on the sale of shares in the railway and other joint stock companies, a practice exists of omitting to state in the instrument of transfer the true sum paid or agreed to be paid for such shares, whereby the stamp duty payable on such transfer is evaded; the Commissioners of Inland Revenue deem it right to give the following notice,—viz.

"That on the sale of property of any kind it is required by law that the full purchase or consideration money which shall be directly or indirectly paid, or secured or agreed to be paid for the same, shall be truly set forth and expressed in words, at length, in the deed or instrument whereby the property shall be transferred; and that in default thereof, both the purchaser and seller incur a penalty of 50*l.* and five times the amount of the duty evaded by the omission; and that the person employed in preparing the transfer incurs a penalty of 500*l.*; and *if he be an attorney, solicitor, or writer to the signet, he is, on conviction, thenceforth disabled from practising.*

"That if either of the parties to the transfer gives information to the Commissioners, whereby the penalty incurred by the other, or the quintuple duty, or any part thereof may be recovered, he is not only to be indemnified and discharged from his liability, but may be rewarded, out of the money so recovered, to such an extent, not exceeding one-half thereof, as the Commissioners shall think proper.

"That the purchaser may recover back from the seller, in an action at law, so much of the purchase money as shall not be set forth in the transfer, or the whole thereof, if no part be set forth.

"The Commissioners also give notice, that they will liberally reward persons who may give them information by means of which any of such penalties shall be recovered.

"By order of the Board,
"J. C. FREELING, *Secretary.*
"*March*, 1849."

ATTORNEYS' CERTIFICATE DUTY.

To the Editor of the Legal Observer.

UNQUALIFIED PRACTITIONERS.

SIR,—It has long been a matter of surprise to me that, notwithstanding the efforts that

have been made from time to time, and are now again being made for the removal of the Certificate Duty payable by attorneys, no one has thought it worth his while to call your attention to the *number of persons who are practising without any Certificate*, to the great injury of those members of the profession who do bear the burthen.

The practices of these gentry are such as to bring the whole body of the profession into disrepute. At Sessions and Assizes their conduct is most disgraceful, and heaven help the poor prisoner who happens to fall into their clutches. Having no character of their own to lose, they descend to all sorts of meanness and trickery, such as I am sure you can have no conception of, otherwise you would have called the attention of the profession to the matter long ago for the purpose of applying some remedy to so serious an evil.

AN OLD SUBSCRIBER.

Liverpool, 3rd April, 1849.

[We will thank our correspondent to furnish such details as he may deem useful. We would also suggest that he should lay a statement before the local Law Society, and, after collecting the evidence, they will communicate with the Incorporated Law Society for the purpose of an application to the Court.

If the Certificate Duty were abolished, the persons who now practise without a certificate would be rendered more easily amenable to the Court, and much mal-practice would be suppressed.—ED.]

The following petitions for the repeal of the tax have been presented since our last list from

Yeovil, by Sir *Alexander Hood*.
Hastings, Mr. *Plowden*.
Upton-upon-Severn, *General Lygon*.
Hereford, Mr. *Arkwright*.

SHORT FORMS OF CONVEYANCES.

LORD Brougham's Bill to compel the taxing officers to reject the ingredient of *length* in ascertaining the proper charges for deeds and wills, and considering only the skill, labour, and responsibility of the solicitor, will destroy the uniformity of charges which have been long established, and leave each practitioner to estimate the value of his own services.

Respectable practitioners will confine themselves within reasonable bounds, but, unfortunately, there is a large class whose charges, uncontrolled by any settled scale, will not be limited to the present rate of charge but by an arbitrary rule of their own. The public, therefore, will not gain by the proposed change.

The Taxing Master should not be compelled to exclude the length of an instrument from his consideration, but not to be bound by it. Indeed he is not now restricted from considering whether a deed or abstract is not improperly extended, and disallowing such portion as he may think superfluous.

There are no less than three Real Property Bills before Parliament and others relating to Transfers of Property. Before the principle of taxation can be altered, these new measures should be tried.

CONTEMPLATED REDUCTION IN CHANCERY FEES.

THE intimation we were enabled to give in our Postscript of last week, has been confirmed. We understand that a bill will be brought in soon after the Easter recess, to authorize the abolition of a very numerous class of fees, many of small amount, and to provide for the payment of the remainder by stamps.

Amongst other improvements, the copying of papers in the office of the Masters in Chancery will be transferred to the solicitors who on carrying in their papers will immediately supply the other solicitors with copies. Delay will thus be avoided, the accuracy of the copies will be secured on the responsibility of the solicitor, and they will be supplied in a convenient form. Some advantage will result to the solicitor without any additional expense to the suitor, and in many cases the solicitors will be able to arrange amongst themselves in amicable suits and in cases where the property is of small amount, to save much expense to the parties.

We hail these steps in the "right direction" towards the diminution of the "Taxes on the administration of Justice," for which we have so long contended.

NOTES OF THE WEEK.

INNS OF COURT.—LEGAL EDUCATION.

MR. Ewart has given notice of a motion for a return respecting the proceedings taken to promote legal education by the Inns of Court. This will be made after the Easter recess.

We are glad to find that some further efforts are intended to be made on this subject.

TRANSFER OF LANDED PROPERTY IN IRELAND.

Mr. Sadleir, the Member for Carlow, has given notice of calling the attention of the House to the legal circumstances which unduly impede the sale of landed property in Ireland, and to those facilities which may be safely afforded for its free transfer.

We wish Mr. Sadlier, who is a very able solicitor, all possible success.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Fitch v. *Rochfort*. March 21, 1849.

INJUNCTION. — PAWNBROKER. — SUPPRESSIO VERI.

An injunction restraining a pawnbroker from selling certain valuable articles was dissolved, on the ground that the plaintiff had suppressed the material facts of the agreement to sell, and notice of sale.

An injunction had been granted on the 7th March, by the Vice-Chancellor of England, upon an *exparte* application restraining the defendant, a pawnbroker, from selling certain valuable articles of plate and jewellery deposited with him by the plaintiff. The plaintiff had, at various time during 1845 and 1846, borrowed large sums of money from the defendant, depositing articles to the value of 3,000*l.* as pledges. The moneys were advanced in sums exceeding 10*l.* each, and amounted in the whole to 1,383*l.* In the duplicates delivered with each advance, the plaintiff empowered the defendant to sell the articles if they were not redeemed within 12 months, and that the rate of interest was to be three per cent. per pound sterling a month. The interest not having been paid, the articles were advertised for sale, whereupon the plaintiff obtained an *exparte* injunction, on the ground that the defendant was not authorized under the 39 & 40 Geo. 3, c. 99, (the Pawnbrokers' Act,) to advance more than 10*l.* on each duplicate, and that by advancing a larger sum he had acted illegally. The duplicates had since been stamped so as to operate as agreements. On the 16th March, a motion was made to dissolve the injunction, but it was refused with costs, and the injunction continued on the ground that the transactions were within the 39 & 40 Geo. 3, c. 99, and not authorized by the 2 & 3 Vict. c. 37, (the Usury Act.) The defendants now appealed from the decision.

It appeared that the plaintiff had in the bill and affidavit suppressed the true state of the facts, and stated it was agreed the articles pledged were to be retained as securities for the monies advanced until such time as the plaintiff could repay the same, and that interest to the amount of 207*l.* 9*s.* was paid up to November 27, 1846. The agreement, deposited at the time of advance made, was suppressed. The plaintiff had thereby authorized the defendant, at 12 months after date, to sell by auction or private contract, the articles specified on the back of the same, if not sooner redeemed; on security of which a sum of money was advanced at interest at the rate of 3*d.* per pound a month, to be redeemable by the plaintiff during the first month. If the articles were sold, the principal and interest were to be paid out of the proceeds, and the surplus, if any, paid to the plaintiff if demanded within three years, and if there were any deficiency, the plaintiff agreed to make it good. The defendant had made three applications to the plaintiff in the month of January, previous to the intended sale in February, but receiving no answer, employed Mr. Robins to catalogue and sell the jewellery. One of the catalogues was sent on the 4th March, and the sale was advertised for the 7th.

Rolt and *Wright*, in support of the motion to dissolve, contended that the injunction of the Court below had been obtained upon two material suppressions of facts,—the written agreement and the notice to sell; and that the transaction was one of mere money lent with interest, as appeared upon the contracts, and was authorized by the 2 & 3 Vict. c. 37; citing *Pennell* v. *Attenborough*, 4 Q. B. 868.

Malins and *Swift*, in support of the injunction.

The *Lord Chancellor* said, that whenever a party required the interposition of this Court, he was bound to state all the necessary facts, or otherwise the injunction would be withheld, or if granted, dissolved. The plaintiff had mis-stated the material facts of the case, and obtained the injunction thereupon, and the defendant was entitled upon coming with a true statement of the facts to have that injunction dissolved. The injunction of the Vice-Chancellor must, therefore, be dissolved with the costs in the court below.

Evans v. *Protheroe*. March 14, 16, 1849.

NEW TRIAL.—CONFLICTING EVIDENCE.

New trial of issue on the ground that the evidence given on the trial was contradictory to the depositions on the record, and that the Court required the facts to be better ascertained.

This suit was instituted in 1841, to ascertain the title to certain leasehold property in Wales, under the following circumstances.—The father of the parties having died intestate, leaving three sons, one of them, Thomas Evans, retained possession of the estate for 17 years after the intestate's decease, during which period the possession was not contested. It appeared that administration had not been taken out, and that in consequence the occupant's title could not be disputed; but it was not shown whether he possessed the property beneficially or subject to the claims of others. Upon the title being questioned by one of the brothers, Jenkyns Evans, Thomas Evans alleged that he held the property by virtue of an agreement between him and another brother, James Evans, who was then dead. The defendant having denied the existence of this agreement, an issue was directed to ascertain whether there was such an agreement, and if so, what its terms were. The jury at the trial had found a verdict for the plaintiff, and the defendant thereupon had applied to the Vice-Chan-

cellor Wigram for a new trial, on the ground that the verdict was against the evidence. His Honour had refused the application, and this appeal was therefore presented.

Walker for the appellant; *Solicitor-General* and *James* for the respondent.

The *Lord Chancellor*, after taking time to consider the evidence, and the summing up of the Judge at the trial, said, that the evidence given by some of the witnesses appeared to be contradictory to what they had deposed to on the record, and that the Court could not exercise its judgment without having the facts better ascertained. Further inquiry was, therefore, necessary, and the order of the Court below must be discharged and a new trial had, notwithstanding the expense to which the parties would be put. Appeal allowed.

March 29, 30.—*Stewart* v. *Forbes*—*Cur. ad. vult.*

— 30.—*Mealove* v. *Carter*—Motion to alter venue in the trial of an issue, refused with costs.

— 31, April 2, 3.—*Penny* v. *Watts*—*Cur. ad. vult.*

— 4.—*Exparte Spackman, In re Agricultural Cattle Company*—Part heard.

Rolls Court.

Hall v. *Franck and others.* March 9, 10, 1849.

LIABILITY OF TRUSTEE.

Payment of mortgage debt to one trustee only under a marriage settlement without the authority of the other held *bad, and the money so paid being misapplied and lost, the money was ordered to be reinvested.*

By the marriage settlement of John Crawley and Mrs. Frances Draper, widow, a sum of 3,000*l.* consols, was vested in the names of Franck and Hughes, upon trust for the sole use of Mrs. Crawley, and at her death for her husband for life, and at the death of the survivors to her or his appointees. This sum was mortgaged in January, 1841, to secure 776*l.* 9*s.* 9*d.* and interest to Mary May, subject to redemption. This mortgage was, in December, 1841, assigned to the defendant Mainwaring, in consideration of payment of the 776*l.* 9*s.* 9*d.*, and 16*l.* 3*s.* 6*d.* interest, and he advanced a further sum of 407*l.* 6*s.* 9*d.* to Mr. and Mrs. Crawley, on the same security, making in the whole 1,200*l.*, and notice was given of the transfer and further advance to the trustees. On the marriage of the defendant Mainwaring, the above mortgage debts were, in Dec. 1841, assigned to Cecil Hall and John William Harrison, upon trust to pay the dividends to Mainwaring for life, and at his death to his wife, and after the death of the survivor to the issue of the marriage, and if none, to the survivor absolutely. Mr. and Mrs. Crawley, in Jan. 1843, being desirous to pay off the mortgage, requested their trustees to sell a portion of the 3,000*l.* consols, and apply the proceeds for that purpose. The sale accordingly took place on the 10th May, and the proceeds were paid over to Mr. Groves, their solicitor, who retained the amount of his costs, and, as agent for the trustees, after some correspondence, paid over the balance to Harrison, on his sole receipt. The several deeds of Jan. and Dec. 1841, were handed to Mr. Groves, but no release of the mortgage debt, nor any re-assignment of the mortgaged property was made by the trustees of Mainwaring. Harrison did not invest the money, but applied it to his own use, accounting to the parties entitled under Mainwaring's settlement for the dividends as if it had been invested. Harrison died in 1844, insolvent, and the misapplication of the money was then discovered. Hall died in Feb. 1844, intestate, and Mainwaring and his wife, in June, 1846, appointed the plaintiffs trustees under the settlement. And they instituted this suit to compel the trustees under Mrs. Crawley's settlement to pay the 1,200*l.*, and interest from June 11, 1844, on the ground that the payment to Harrison on his sole receipt was without Hall's authority, and therefore improper.

Turner and *Shebbeare* for the plaintiffs; *Walpole* and *Keane* for Mainwaring and wife; *Roupell* and *E. G. White* for the trustees under Crawley's settlement.

The *Master of the Rolls* said, that the payment of the 1,200*l.* upon the sole receipt of one of the trustees without the authority of the other was bad, and that, therefore, the sum must be recouped to the estate under Mainwaring's settlement, and the defendants pay the costs of the suit.

March 29.—*Moore and others* v. *Jones*—Injunction to restrain waste dissolved with costs.

— 29, April 4.—*Wood* v. *Taunton*—Order to enforce award.

— 30.—*Loscombe* v. *Wintringham*—Judgment on construction of will.

— 30, 31.—*Baker* v. *Gibson and others*—Judgment on construction of will.

— 31.—*Attorney-General* v. *Gilbert and others*—Order for payment to the Master of free grammar school, one-third of the rents until further order; costs to be paid out of the estate.

April 2.—*Edwards* v. *Edwards*—Judgment on construction of will.

— 2.—*Cousin* v. *Walker*—Stand over—Order made with consent to discharge the consignee and receiver of the estate.

— 2.—*Leith* v. *Bishop of London*—Stand over.

Vice-Chancellor of England.

Myers v. *Perigal.* Feb. 21, 1849.

RAILWAY DEBENTURES.—MORTMAIN ACT.—BANK SHARES.

Held, *that railway debentures for money borrowed upon the credit of the undertaking are not charged upon land within the Statute of Mortmain; but certain bank shares* held *to be within that act.*

The testator by his will, dated 24th June, 1844, after making various bequests to his wife, directed her to pay thereout all his just

debts, funeral and testamentary expenses. He also gave several legacies, amounting to 810*l.*, to be paid out of the real estate, or out of such part of his personal estates as consisted of money, mortgages, railway debentures, shares in bridges, or which savoured of the realty, which he directed to be primarily liable for such payments. The testator directed that if this fund were insufficient, the residue of his personal estates should become liable to the extent of such deficiency. He then gave all the residue of his personal estate, including the shares in the Northumberland and Durham District Bank, to trustees, on trust to convert into money immediately after his decease, and invest in government securities, and to pay the dividends arising therefrom to the widow for life, and after her death to certain charitable institutions in equal proportions. At the decease of the testator, his widow filed this bill for the administration of the estate. A reference had been made to the Master upon the decree to ascertain what personal estate the testator was possessed of at the time of his death, and what portions were to belong to the charitable institutions named in the will. The Master found that the mortgages, railway debentures, bridge and bank shares, which formed part of the testator's estate, were all chattels real and savoured of the realty; except so far as they were respectively altered in respect of their nature, by a deed of settlement by which the shares in the bank were declared to be personalty, and by 10 Geo. 4, c. lxxii., by which the railway shares were likewise declared to be personal estate.

Stuart and *Faber*, for the plaintiff, cited *Collinson* v. *Pater*, 2 Russ. & M. 344; *Howse* v. *Chapman*, 4 Ves. 542; and *Finch* v. *Squire*, 10 Ves. 41.

J. Parker and *N. Wetherell* for the charitable institutions; *Teed* for the executors; *Renshawe* for the next of kin.

The *Vice-Chancellor* said, that the railway debentures did not come within the Statute of Mortmain, 9 G. 2, c. 36. The 10 G. 4, c. lxxii., enabled the mortgagees, in case the interest upon any mortgage were in arrear, and upon application to two justices, to have proper persons appointed to receive the whole, or such part or parts of the rates as were liable to pay such debts, and such rates were to be received to the use of the persons to whom the interest was due. It did not appear from the debentures that the rates were liable, and there was no expression which could amount to an assignment of the rates, but it was provided that the money was borrowed on the credit of the undertaking. Neither did it appear that the holder had any right to apply under the 10 Geo. 4, c. lxxii., s. 62; which act only applied to cases in which the rates were rendered liable to pay the interest by means of the instrument held by the creditor. It was true that the holder of a promissory note might, by a circuitous mode take out execution, but still there was no charge upon the land. The railway debentures, therefore, were not within the Mortmain Act; the shares in the bank were differently situated, and were charges upon land, and therefore were within the act.

March 30.—*In re Goosnargh's Hospital*—Reference to the Master to appoint trustees.

— 31.—*In re* 10 & 11 *Vict. c.* 96, *and the trusts of the will of Thomas Bartholomew*—Costs to be paid out of the special fund.

April 3, 4. — *Tempest* v. *North-Western Railway* — Demurrer overruled — Injunction granted.

— 4. — *Fitch* v. *Rochfort* — Injunction granted.

Vice-Chancellor Knight Bruce.

In re Turner. Nov. 2, 15, 1848; Jan. 24, 1849.

BANKRUPT.—OUTLAWRY.—COSTS.

A PETITION was presented on the 2nd November, by Joseph Turner, saddler and harnessmaker, of Newmarket, to reverse or annul the outlawry which had been obtained against him, and all proceedings had thereon; and that the petitioner might be at liberty to surrender under the fiat; that he might have a month's time for fully disclosing and discovering his estate and effects, and finish his last examination, &c.; and that the costs of the assignees might be paid out of the estate. It appeared that a fiat was issued on 18th Jan., 1848, against the petitioner, upon the petition of George Curtis, and that he was duly declared a bankrupt. The petitioner was required to surrender on the 11th Feb., and the final examination was fixed for 10th March. The petitioner, however, on 29th Sept., 1847, proceeded to the Cape of Good Hope, on account (as he alleged) of family disagreements, and in the belief that he left sufficient assets to pay his creditors in full, and was in consequence duly outlawed on 10th March. He returned to this country on 9th September, and stated he only heard on the 10th that a fiat had issued against him, whereupon the petition was filed. The assignees agreed not to oppose the reversal, if the bankrupt paid all the costs incurred by his non-surrender and consequent outlawry, and if he delivered over to the official assignee his remaining property of which the estate had been defrauded. They also required him to render a full account of all the property the bankrupt took with him to the Cape, and to attend regularly at the official assignees' and assist them in selling and collecting the accounts.

L. Thomas in support of the petition; *Swanston* and *Sheffield* contrà.

The *Vice-Chancellor* granted the prayer of the petition, and ordered that the costs of the petitioner and assignee of, and occasioned by, this application, should be paid out of the estate of the bankrupt, such costs being first taxed and ascertained by the Commissioner under the fiat or by the Master of the Court of Bankruptcy.

In pursuance of this order, Mr. Commissioner *Fonblanque* appointed the 6th December for the surrender, and on the examination the bankrupt stated that the reason for his quitting England was *the embarrassed state of his affairs*, and that he took with him various goods, for the sale of which he obtained 140*l.* and about 100*l.* in money. The sum given up was only 11*l.* out of 60*l.* which he had on landing in England. The Commissioner in consequence declined to take the surrender on the ground that the reason stated to the Commissioner for quitting the country was inconsistent with that contained in the affidavit upon which the surrender was ordered. The taxation of the costs was also, upon the application of the solicitor to the assignees, ordered to be suspended for one month, and, upon a further application, for 14 days more. The official and trade assignees, in pursuance of the Commissioner's order, presented a petition to the Vice-Chancellor *Knight Bruce*, and prayed that the order of Nov. 15, 1848, might be discharged, and the costs of the petitioners of, and occasioned by, the petition of the bankrupt, and the order of Nov. 15, 1848, and the proceedings consequent thereon, and of and incident to the present petition, and the order and other proceedings consequent thereon, might be paid by the bankrupt; such costs being first taxed and ascertained by the said Commissioner or the Master of the Court of Bankruptcy.

Swanston and *Sheffield* in support of the petition; *L. Thomas* contrà.

The *Vice-Chancellor* ordered the petition to be dismissed, and that the petitioner should pay to the respondent his costs of, and occasioned by, this application.

E. Burkitt, solicitor to the assignees; *Jenkins, Abbott*, and *Jenkins*, solicitors to the bankrupt.

March 29, 30.—*Hayward* v. *Purssey*—*Cur. ad. vult.*

— 30.—*Dawson* v. *Brickman*—Specific performance of agreement of 1847, subject to the one of 1848—reference to approve of title.

— 30, 31.—*In re Tomlinson*—Interim order for the mother to have charge of the infant till further order.

— 31.—*Exparte Keightley, in re Stockdale*—Petition dismissed with costs.

— 31.—*Exparte Tebbutt, in re Ridgway*—Proof allowed, with costs of petition out of the estate.

Vice-Chancellor Wigram.

Davenport v. *Davenport*. March 3, 6, 1849.

INJUNCTION TO RESTRAIN WASTE.

Injunction refused, with costs, to restrain a party, who has been in undisturbed possession of the estate for 20 years, from felling timber, although an issue at law was pending as to the title.

THIS bill was to restrain the defendant, Lady Davenport, pending an action of ejectment brought by the plaintiff against her, from cutting down and selling the timber upon an estate at Bramhall, in Cheshire, and it also prayed an account of the timber already cut down and sold, and of the proceeds of the sale. It was contended for the defendant, that a Court of Equity would not grant an injunction restraining the party in possession from exercising acts of ownership until the question of title had been decided at law. In support of the application it was urged, that as the acts complained of amounted to trespass, accompanied with waste, the Court would interfere *pendente lite* by injunction.

The *Solicitor-General* and *Hare*, in support of a demurrer to the bill for want of equity, cited *Haigh* v. *Jaggar*, 2 Coll. 231; *Jones* v. *Jones*, 12 Ves. 166; 3 Merivale, 161; and *Vice* v. *Thomas*, 4 Y. & C., Exch. 538.

Bacon and *Bagshawe* in support of the injunction.

The *Vice-Chancellor* said, that to induce the Court to interfere, it must be shown that the party seeking the injunction had proceeded with all due diligence to bring the question to a decision. Here the defendant had been in undisturbed possession for a period of nearly 20 years, and in conformity with the cases cited at bar, the demurrer must, therefore, be allowed with costs.

March 29.—*In re the Bedford Charities*—Reference to the Master for charity scheme and for an account.

— 29, 30, April 4.—*Bagshawe* v. *M'Neill*—Exceptions allowed.

— 31.—*Lee* v. *Elmslie*—*Cur. ad. vult.*

— 31, April 3.—*Wilkinson* v. *Godson*—*Cur. ad. vult.*

April 4.—*Labouchere* v. *Clarkson*—Part heard.

Queen's Bench.

(Before the Four Judges.)

Humfray v. *Scrope*. Feb. 8, 1849.

TITHE COMMUTATION ACT.—LIMITATION OF RIGHT OF APPEAL.—PRACTICE.

The 46th section of the Tithe Commutation Act, limiting the time for bringing an action on behalf of any person interested in any land or tithes, and dissatisfied with the decision of a Tithe Commissioner, to three calendar months, is to be construed strictly, without reference to the death of an unsuccessful party within the prescribed period.

If an action be commenced after the time limited by the act, the Court will interfere summarily and stay the proceedings upon motion and rule.

THE 6 & 7 Will. 4, c. 71, s. 46, provides, that any person claiming to be interested in any lands, or in the tithes thereof, who shall be dissatisfied with the decision of a commis-

tioner, or assistant commissioner, under this act, may (if the yearly value of the payment to be made or withholden, according to such decision, shall exceed 20*l.*) cause an action to be brought in any of the Courts of Law, against the person in whose favour such decision shall have been made, within three calendar months next after such decision shall have been notified in writing, &c. An award was made by one of the assistant Tithe Commissioners, on the 30th March, 1846, as to the validity of a *modus*, applicable to certain lands in the parish of Pudding Norton, in the county of Norfolk, and this award was duly notified to the attorneys of the then rector, on the 17th April, 1846. On the 15th May, 1846, the rector died, and from circumstances not material to relate, no rector was appointed until the 23rd July, 1848, when the present plaintiff was presented and inducted, and he issued a writ of summons, with a view to disputing the award, on the last day of August, 1848. Upon a rule to set aside the writ of summons and all subsequent proceedings, two questions were raised.—1st. Whether the action was too late, within the true construction of the 6 & 7 Will. 4, c. 71, s. 46; and 2ndly. Whether the Court would interfere summarily to stay the proceedings?

Kelly, Sir F., and *Baddeley*, supported the rule, and *Thesiger*, Sir F., was heard against it.

Per curiam. No provision is made in the act for the case of a person who is unsuccessful before the commissioner, and who dies within three months without commencing any action; although the framers of the act have expressly provided for the death of parties interested after action brought, (sect. 47); and for the death of persons in whose favour the commissioners decide, before action brought, (sect. 48). These enactments render it more difficult for us to supply by construction a provision for the case of the death of an unsuccessful party before action brought. Under these circumstances we are constrained to decide the case by analogy to the rules which have been established in construing the general Statutes of Limitation. One of these rules, settled by numerous decisions is, that when the time of limitation once begins to run, no disability, although it may be perfectly involuntary, prevents the operation of the statute. [*Rhodes* v. *Smethurst*, 4 M. & Wels. 42; S. C. in Error, 6 Mees. & W. 351, and *Prideaux* v. *Webber*, 1 Lev. 31.] Here the time began to run from the 17th April, 1846, when the award was notified to the rector, and the operation of the statute was not suspended by his death. As to the form of the rule, it has not been suggested that there is any other mode by which the defendant could avail himself of the objection which we think is well founded. The rule to set aside the writ of summons and subsequent proceedings, will therefore be absolute.

Rule absolute.

Shaw v. *The York and North Midland Railway Company.* Feb. 24, 1849.

RAILWAY CARRIERS.—LIMITATION OF RESPONSIBILITY.

Where the defendants undertook to convey a horse, subject to the owner undertaking all risk as to the conveyance, and the horse was killed by reason of the insufficiency of the box in which he was placed, Held, *that the plaintiff could not recover in an action against the defendants as common carriers, whose duty it was to carry safely.*

Quære, *whether the plaintiff could recover if he had alleged in the declaration that it was the duty of the defendants to put the horse in a proper carriage, and that they had neglected their duty in this respect.*

CASE, against the defendants as common carriers, to recover compensation in damages for the loss of a horse, which was killed whilst being conveyed in a horse-box on the line of railway. The declaration was founded upon the breach of alleged duty on the part of the defendants to carry the horse safely. The defendants by themselves denied that they had undertaken to carry the horse safely, and alleged that they had expressly undertaken to convey the animal at the owner's risk. At the trial, it appeared that the horse's death was occasioned by the fastenings of the horse-box in which he was conveyed proving insufficient. It was proved, that when the horse was delivered, a ticket was given to the plaintiff's servant with this notice:—"This ticket is issued subject to the owner's undertaking all risk as to the conveyance, as the company will not be responsible for any damage done while being conveyed or on unloading." There was a verdict for the plaintiff, but a rule was afterwards granted to enter a nonsuit.

The rule was argued by *Martin* and *Addison* for the plaintiff, and *Knowles* for the defendant.

The *Court*, after consideration decided, that the ticket delivered to the plaintiff's servant, at the time the defendants undertook to convey the horse, formed an essential part of the contract, and that the allegation that the defendants agreed to carry the horse safely was disproved by the notice affixed to the ticket. It might be, however, that notwithstanding the nature of the contract, if the plaintiff had alleged that it was the duty of the defendants to have put the horse in a proper carriage, and they neglected so to do, he might have recovered. Rule absolute to enter a nonsuit.

Common Pleas.

Caunt v. *Thompson.* Feb. 14, 1849.

BILL OF EXCHANGE.—NOTICE OF DISHONOUR.

Where a bill was presented to the defendant, who was the drawer, as the executor of the acceptor, semble, *no notice of dishonour is necessary, although notice is necessary and knowledge alone is insufficient.*

This was an action of assumpsit on a bill of

exchange brought by the indorsee against the drawer. The defendant pleaded that no notice of dishonour had been given. The defendant was the executor of the acceptor, and the bill in question had been presented for payment to him as executor. A rule had been obtained, calling on the defendant to show cause why a verdict should not be entered for the plaintiff, on the issue which denied the want of notice.

The *Court* said, that there was no distinct form of words required to prove a notice of a bill having been dishonoured, but notice was necessary to be given, and knowledge of dishonour was insufficient. The case of *Solarte* v. *Palmer*, 1 Bing. N. C. 194, had not been strictly followed. The bill in this case was presented to the defendant *in propriâ personâ*, and he therefore knew it was dishonoured; the plaintiff is, therefore, entitled to have the verdict entered for him on this issue.

Exchequer.

Mills v. *The Guardians of the Alderbury Union.* Feb. 13, 1849.

MONEY HAD AND RECEIVED.—PAYMENT IN IGNORANCE OF FACTS.

A surety who has paid money for which he is not legally liable, in ignorance of facts, may recover it back in an action for money had and received.

THE plaintiff, with another person, executed a joint bond to the defendants, as surety for William Bird Brodie, a banker at Salisbury, who was appointed treasurer to the Union. The firm of which William Bird Brodie was a partner, became bankrupt in the year 1848, with a balance in their hands, belonging to the Guardians of the Alderbury Union, and the plaintiff having been called upon by a clerk of the union to make good the deficiency, paid into the bank of Messrs. Smith and Everett, with whom the defendants had opened an account, on account of the defendants, the sum of 154*l.* 12*s.* 6*d.*, taking Smith and Everett's receipt, and the sum so paid by the plaintiff was entered in Smith and Everett's books to the defendants' credit. It afterwards turned out, that the balance due to the union, when W. and G. Brodie stopped payment, had not been paid to the credit of William Bird Brodie, but had been paid by the order of the defendants into their account with "Messrs. Brodie and Co., the treasurers of the union," considering the firm as the joint treasurers of the union, and orders had been given on "W. & G. Brodie;" and it was contended that the sureties, not being liable for monies not traced to the sole possession of their principal, the plaintiff was entitled to recover back the money. On the other hand, it was insisted that the possession of the firm was that of each partner.

This point was argued upon a rule to set aside a verdict for the plaintiff for the sum paid, and enter a nonsuit.

M. Smith was heard in support of the rule, and *Crowder* (with *Barstow*) contrà.

Per Curiam. The plaintiff paid money which he was not liable to pay, in ignorance of the facts, and he is entitled to recover back the money so paid in an action for money had and received to his use. The verdict is right, and the rule for a nonsuit must be discharged.

Pigeon v. *Burslem.* Feb. 24, 1849.

PLEADING.—ILLEGALITY OF CONTRACT.—DEMURRER.

A plea which professes to answer the whole declaration and only answers a part is bad on demurrer.

To a declaration containing separate counts on two bills of exchange with an account stated, the defendant pleaded to the whole declaration that the claim of the plaintiff arose out of, and was incidental to, the business of a broker, in regard to selling and buying of certain railway shares and scrip, in the city of London, and that the plaintiff was not duly admitted to practise as a broker of the city of London. The plaintiff demurred generally.

After argument, the *Court* held, that the plea was bad. Assuming that the plea contained a good answer to those portions of the plaintiff's claim which embraced his brokerage, it was not so for all of it, some of his demands appearing to be for money paid, which was not within the effect of the plea. The plea also was too ambiguous, for it did not follow that business arose out of, or was connected with, brokerage, which was alleged to be incidental thereto, the strict sense of the word incidental being something beside the main question, and which was not under discussion.

Judgment for the plaintiff.

Court of Bankruptcy.

(Before Mr. Commissioner Fane.)

In re Chappel. Feb. 2, 1849.

DISCHARGE OF BANKRUPT FROM CUSTODY. CONSTRUCTION OF 11 & 12 VICT. C. 86.

THE bankrupt, who was arrested for debt, one on a bill of exchange, applied for his discharge from custody under the 11 & 12 Vict. c. 86.

It appeared that the bankrupt entered into partnership with a person named Thompson, who was indebted to Messrs. Allan and Poynter for goods sold and delivered four or five months before the bankrupt joined the concern, and that the bill in question was a joint curity for the debt of the partner.

Mr. *Lawrance* supported the application, and Mr. *Cooke* showed cause against it.

The *Commissioner.* There is a discretion given to the Court under the act, and I shall not interfere unless the bankrupt makes out a clear case to justify my interference. It appears that the bankrupt had wantonly incurred this debt, by giving his acceptance for the old debt of his partner, and without any reasonable expectation of being able to meet the liability thus adopted. The creditors had been thereby deceived, and their right to arrest and detain the debtor ought not to be interfered with. I therefore decline to make any order for the discharge of the bankrupt.

Application refused.

ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS.

Courts of Common Law.

CONSTRUCTION OF STATUTES.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75, 439.

Law of Costs, p. 35.

Law of Evidence, p. 56.

Law of Attorneys, p. 341.

Courts of Equity:

Law of Property and Conveyancing, pp. 113, 401.

Principles of Equity, pp. 134, 380.

Practice, pp. 196, 421.

Pleadings, p. 361.

Bankruptcy, p. 158.]

AMENDMENT.

☞ *Under* 3 & 4 *Wm.* 4, *c.* 42, *s.* 23.—*Surveyor of highways.*—In case against a surveyor of highways, appointed under the 7 & 8 Vict. c. 84, for the following words alleged to have been spoken by him at a public auction, in reference to certain unfinished houses at a place called Agar Town, which the plaintiff had put up for sale: "My object in attending this sale is, to inform purchasers, if there be any here present, that I shall not allow *purchasers (meaning persons who then might be disposed to purchase at the said sale, the said house of the plaintiff, so exposed for sale as aforesaid,)* to be finished or occupied, until the roads are made good in Agar Town. I have no power to compel any one to make the roads; but I have power to stop the buildings until the roads are made. If there shall be any purchasers, they will have to keep the carcasses in their unfinished state until the roads are made." The judge at the trial allowed the declaration to be amended, under the 3 & 4 Wm. 4, c. 42, s. 23, by substituting for the words in italic, the words "the houses:" *Held*, that such amendment was properly allowed. *Pater* v. *Baker*, 3 C. B. 831.

APPEAL.

See *Mandamus; Tithes.*

ASSESSED TAXES ACT.

See *Justices of the Peace.*

ASSIGNEE OF REVERSION.

32 *H.* 8, *c.* 34.—The grantee of part of the grantor's reversionary interest in the whole of the property in which a *particular estate*,—as a term of years,—has been created, is an assignee of the reversion within the 32 H. 8, c. 34; but the grantee of the whole reversionary interest in part of the property is not such an assignee. *A.* in Feb. 1840, demised to *B.* for 21 years as from Christmas then last; *B.* in Jan. 1841, demised to *D.* for three years, and, in April, 1842, demised to *E.* for the whole of *B.'s* term, less one day:

Held, that *E.* was an assignee of the reversion of the premises demised within the statute. *Wright* v. *Burroughes*, 3 C. B. 685.

BANKING COMPANY.

Sci. fa. to charge members.—The fact of a *sci. fa.*, to charge a party as a member of a banking copartnership, under the 7 Geo. 4, c. 46, s. 13, having been issued without leave of the Court, in a case when such leave is necessary, or being ambiguous on the face of it, is a mere irregularity, to be taken advantage of on motion, and promptly.

But, where the writ stated that *A. B.* and *C. D.*, "*were at the time of the judgment, and still are*," members of the copartnership, and prayed execution against them; and the declaration recited a *sci. fa.*, charging them as executrix and administrator respectively of persons who were members *at the time of their respective deaths*, (which took place before the judgment,) and praying execution of the goods and chattels of the deceased in the hands of *A. B.* and *C. D.* as executrix and administrator to be administered: *Held*, that this misrecital was a substantial variance, the right to take advantage of which was not waived by the guarantees' obtaining orders for time to plead.

Quære, whether under this statute recourse can be had to the estates of deceased members of the copartnership? *Ricketts* v. *Bowskey*, 3 C. B. 889.

Cases cited in the judgment:—Campbell v. Fleming, 1 Ad. & E. 40; 3 N. & M. 854; Bradley v. Warburg, 11 M. & W. 452.

CERTIORARI.

1. *Disorderly house.*—On an indictment for keeping a disorderly house, the power of the Court to grant a certiorari at the defendant's instance, is taken away by statute 25 Geo. 2, c. 36, s. 10, whether the prosecution be instituted according to sections 5 & 6 of that act, or in the ordinary course. *Reg.* v. *Sanders*, 9 Q. B. 235.

2. *Party grieved.—Costs.*—Where an indictment is prosecuted by persons having some interest in the subject matter, and is removed by certiorari, the prosecutors, on conviction, are entitled to costs under the statute 5 & 6 Wm. & Mary, c. 11, s. 3, as parties grieved, though the expenses of prosecution have been paid by other persons.

An attachment for not paying such costs may be obtained against one of several defendants, on affidavit of demand upon and non-payment by him. If his co-defendants have paid, it is for him to show it on motion to set aside the attachment.

It is not an objection available on such motion, that the rule to tax was obtained against all the defendants, and that the rule for an attachment is entitled as in a prosecution against all. *Reg.* v. *Dobson*, 9 Q. B. 302.

Cases cited in the judgment:—Reg. v. Williams, 6 Q. B. 273; Rex v. Cook, 1 M. & Ry. 596.

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Dramatic work.—Venue.—In an action upon the statute 3 & 4 Wm. 4, c, 15, s. 2, for penalties for the representation of a dramatic piece of the plaintiff's, at a "place of dramatic entertainment," without his consent, it is sufficient to describe the offence in the words of the act.

An introduction to a pantomime,—that is, the only *written* part of the entertainment,—is within the protection of the act.

To constitute the *offence*, it is not necessary to show, nor need the declaration aver, that the defendant *knowingly* invaded the plaintiff's right.

To satisfy an undertaking in such a case to give material evidence in Middlesex, the plaintiff, having, in order to prove the authorship, first shown himself possessed of the manuscript in the County of Surrey, proved that it was by his direction offered for representation or sale in Middlesex, to the proprietor of a theatre there: *Held*, that this, as evidence in confirmation of the previous proof of authorship, was sufficient evidence in Middlesex to satisfy the undertaking. *Lee* v. *Simpson*, 3 C. B. 871.

COSTS.

See *Mandamus* 2, 3; *Poor* 5.

COUNTY RATE.

Special act.—Parochial taxes.—Statute 34 Geo. 3, c. 24, enacted that a canal company should be rated to all parliamentary and parochial taxes and assessments for its lands and buildings in the same proportion as other lands and buildings lying near should be rated, and as the lands and buildings of the company would be rateable if they were the property of individuals in their natural capacity.

Held, that *A. B.*, a parish in Buckinghamshire, was to be assessed to the county-rate on an estimate in which the company's lands and buildings were assessed as directed by that statute. For that, under statute 12 Geo. 2, c. 29, the county-rate was to be paid out of the poor-rate of the several parishes, and was, therefore, a parochial tax. And that this was not altered by statute 55 G. 3, c. 51, stat. 56 G. 3, c. 49, or stat. 7 & 8 Vict. c. 33; nor by stat. 54 Geo. 3. c. ciii. (local and personal public,) which enacts, that the justices of Buckinghamshire, in Quarter Sessions, shall assess to the county-rate of Buckinghamshire, every parish, township, hamlet, liberty, precinct and place in the county, rateably, and in due proportions, according to the annual rent or value of all estates within such parish, township, &c., respectively, and which requires returns to be made to the justices (when they deem it necessary,) of the total amount of such rent or value by the churchwardens and overseers of the several parishes, townships, &c., and makes provision for the case of any parish, township, &c., where no poor-rate is laid, and for cases where it may be oppressive to parishes, townships, &c., that the county-rate should be paid out of the poor-rate. *Reg.* v. *Inhabitants of Aylesbury with Walton*, 9 Q. B. 261.

COURT OF REQUESTS.

Affidavit on motion of suggestion.—Upon a motion for a suggestion under the Middlesex Court of Requests' Act, (23 Geo. 2, c. 33, s. 19,) the defendant, in his affidavit, described himself as "of No. 51, Bedford-row, Holborn, in the County of Middlesex," and alleged that he, "before and at the commencement of the suit, was, and ever since had been, and still was, inhabiting and resident in Bedford-row aforesaid, and that he, for and during all that time, was, and still was, liable to be summoned to the Court of Requests, held at Kingsgate-street, Holborn, aforesaid, and that the cause of action, and every part thereof, arose within the jurisdiction of the said Court: *Held*, that this affidavit did not allege, with sufficient distinctness, that the defendant resided in Bedford-row, in the County of Middlesex, or that the Court of Requests held at Kingsgate-street, was the Middlesex Court of Requests. *Thorne* v. *Jackson*, 3 C. B. 661.

Case cited in the judgment:—Rex v. Burridge, 3 P. Wms. 439, 496.

FRAUDS, STATUTE OF.

Interest in land.—The plaintiff agreed to let a house to the defendant, and to sell him certain furniture and fixtures therein, and to make certain alterations and improvements in the house; and the defendant agreed to take the house, and to pay for the furniture and fixtures and alterations: *Held*, that this was an agreement relating to an interest in land, within the 20th section of the statute of frauds. *Vaughan* v. *Hancock*, 3 C. B. 766.

HUSBAND AND WIFE.

Conveyance by married woman under 3 & 4 *Wm.* 4, *c.* 74.—The Court refused, in 1847, to dispense with the concurrence of a husband, under the 3 & 4 Wm. 4, c. 74, s. 91, upon an affidavit merely stating that he had entered a government steamer in Jan. 1844, and that the last the wife had heard of him, was, that in Jan. 1845, he was on board another government steamer at New Zealand, and that she believed it was his intention never to return. *Exparte Gilmore*, 3 C. B. 967.

INDICTMENT.

Obtaining money under false pretences.—An indictment, under statute 7 & 8 Geo. 4, c. 29, s. 53, charged that defendant, contriving and intending to cheat *W.*, on a day named, unlawfully, knowingly, &c., did falsely pretend to *W.*, that he, defendant, *then* was a captain in her Majesty's 5th regiment of Dragoons, by means of which false pretence defendant did, then and there, unlawfully, knowingly, &c., obtain of *W.* a valuable security, to wit, an order for the payment of 500*l.* of the value of 500*l.*, the property of *W.*, with intent then and there to cheat *W.* of the same; whereas, in truth, defendant was not, *at the time of making such false pretence*, a captain, &c., and defendant, at the time of making such false pretence, well knew that he was not a captain, &c.: *Held*, a good indictment, on error after commitment and judgment. For that, it was not necessary to allege more precisely that de-

fendant made the particular pretence with the intent of obtaining the security: nor how the particular pretence was calculated to effect, or had effected, the obtaining. And the truth of the pretence was well negatived, it appearing sufficiently that the pretence was, that the defendant was a captain, &c., at the time of his making such pretence, which was the fact denied. And it was unnecessary to aver expressly, that the security was unsatisfied, at any rate since statute 7 Geo. 4. c. 64, s. 21, the objection being taken after verdict, and the indictment following the words of the statute in creating the offence. *Hamilton* v. *Reginam*, 9 Q. B. 271.

JOINT STOCK COMPANY.

See *Banking Company*.

JUSTICES OF THE PEACE.

Commitment for what time.—A justice's warrant, committing a party in default of his finding sureties to keep the peace, is bad if the commitment be for no definite time, but "until he shall find such securities" or be discharged by due course of law.

An action lies against the justices for committing on such warrant, and *bona fides* is no defence. It is not necessary that such warrant should fix the amount in which sureties are to be given.

Notice of action, for a commitment under such warrant, stated that the justices had caused the complainant to be unlawfully committed *to a certain common gaol or prison in the borough of Monmouth, and there* imprisoned and kept, &c., without reasonable or probable cause, from &c. to &c., (naming the days,) and the notice went on to state, that complainant would, at the expiration of one calendar month, *cause a writ of summons to be sued out of the Court of Queen's Bench*, against the justice, at complainant's suit, *for the said imprisonment*, and proceed against him therefore according to law.

Held, a sufficient notice under stat. 24 Geo. 2, c. 44, s. 1, as to the place where the cause of action arose, the subject of complaint generally, and the intended course of proceeding. *Prickett* v. *Gratrex*, 8 Q. B. 1020.

Cases cited in the judgment:—Willes v. Bridger, 2 B. and Ald. 278; Sabin v. De Bargh, 2 Campb. 196.

2. *General Conviction Act.—Number of justices for receiving informations.—Assessed Taxes Act.*—The provision in the General Conviction Act, 3 Geo. 4, c. 23, s. 2, that in all cases where two or more justices, deputy lieutenants or others, are authorised to hear and determine any complaint, one justice, &c., shall be competent to receive the original information, does not repeal provisions of former statutes, expressly requiring more than one justice, &c., to receive an information. Therefore, a conviction on an information laid before a single commissioner of assessed taxes, (not being a justice,) under statute 52 Geo. 3, c. 93, Sched. (L.) Rule 13, is bad. *Reg.* v. *Griffin*, 9 Q. B. 155.

LANDLORD AND TENANT.

Distress.—Notice.—Under 1 stat. 2 W. & M. c. 5, s. 2, the notice of distress for rent, to be given five days before sale must be in writing. *Wilson* v. *Nightingale*, 8 Q. B. 1034.

LIBEL.

Replication to plea under 6 & 7 Vict. c. 96, s. 2.—By the late Libel Act, 6 & 7 Vict. c. 96, s. 2, a defendant may plead that the libel was inserted in a newspaper without actual malice and without gross negligence; and that he inserted a full apology; and may pay money into Court by way of amends. The clause further enacts "that, to such plea to such action, it shall be competent to the plaintiff to reply generally denying the whole of such plea:" *Held*, that, under that section, a plaintiff is at liberty to deny the whole or any part of such a plea; and that a replication which admitted that the libel was inserted in a newspaper, and the payment of money into Court, and traversed the insertion of the libel without actual malice, and without gross negligence, and the sufficiency of the money paid into Court as amends, was good. *Chadwick* v. *Herapath*, 3 C. B. 885.

LIMITATION OF ACTIONS.

J., seised in fee, leased for 61 years, for a term expiring in 1837, within five years after the passing of stat. 3 & 4 W. 4, c. 27, (July 24, 1833). From *J.*'s death, which happened more than 20 years before the passing of the act, *B.* received the rent reserved on the lease down to its expiration; and he then entered into possession; and afterwards *W.*, within five years after the passing of the act, brought ejectment against *B.*, claiming to be entitled as *J.*'s devisees, immediately on *J.*'s death.

Held, that, under section 9, the action would have been barred by *B.*'s receipt of the rent, but that it was preserved by section 15 for five years after the passing of the act. *Doe d. Angell* v. *Angell*, 9 Q. B. 328.

Cases cited in the judgment: Paget v. Foley, 2 New Ca. 679, 688; Grant v. Ellis, 2 M. & W. 113; Prescott v. Boucher, 3 B. & Ad. 849, 859; Doe dem. Evans v. Page, 5 Q. B. 767; Nepean v. Doe dem. Knight, 2 M. & W. 894, 911; Doe dem. Jukes v. Sumner, 14 M. & W. 38.

MANDAMUS.

1. *Distinction between misprision of officer and error of party.*—By a regulation of the judges made under statute 6 & 7 Vict. c. 20, s. 16, it is ordered that every mandamus shall be tested and made returnable "on a day certain," before the Queen, &c.

Held, that the words requiring the teste to be "on a day certain" mean a day in Term.

Held, also, Lord Denman, C. J., *dubitante*, that where a mandamus had, under the direction of a special pleader, been drawn with a teste out of Term, and so issued, and a return had been made and demurred to, whereupon the defendants objected that the writ was wrongly tested, the Court by its general authority might amend the teste on motion by the prosecutor. For, That the mistake was that of the officer, not that of the party, the officer being bound to see that a proper teste was affixed,

and not adopt an irregular one given by the prosecutor; that the mistake arose from a misconstruction not unreasonable; and that the Court, knowing the date at which the rule for a mandamus was made absolute, might amend according to that date. *Reg.* v. *Conyers*, 8 Q. B. 981.

2. *Costs.*—When cause is shown against a rule for a mandamus, the Court, in the exercise of its discretion, under stat. 1 W. 4, c. 21, s. 6, will in general order costs to be paid by that party to the application who ultimately fails, to that party who ultimately succeeds; but the rule is not invariable.

Where, however, the Sessions had dismissed an appeal on a frivolous preliminary objection, (viz., that the notice of appeal purported to be given, not by the churchwardens and overseers, but, as the fact was, by a majority of the churchwardens and overseers acting on behalf of all,) and a motion was made for a mandamus to the justices to enter continuances and hear the appeal, against which motion the respondents, and not the justices, showed cause, and the mandamus issued and was obeyed: *Held*, that the respondents might properly be required to pay the costs of the motion for a mandamus and of the writ, although, in showing cause, they had upheld the judgment of a Court given in their favour. *Reg.* v. *Surrey, Justices of*, 9 Q. B. 37.

3. *Costs.*—Appellants against an order of removal are entitled to enter and respite the appeal at the Sessions next following the order, without giving notice, though more than 35 days (stat. 4 & 5 W. 4, c. 76, ss. 79, 81,) have elapsed between the receipt of the order and the holding of the Sessions; and to have the appeal tried upon notice at the next Sessions after. The Sessions having refused to hear an appeal, because more than 35 days had elapsed between the receipt of the order and the next Session, this Court granted a mandamus, calling upon them to enter continuances and hear. And, the writ having been obeyed, costs were granted to the appellants on motion, though the respondents, in opposing the rule *nisi* for a mandamus, supported a judgment of the Sessions in their favour; and though the appellants ultimately succeeded, not on the question of settlement, but on the omission of the respondents to send with the examinations a document referred to in them. *Reg.* v. *London, Justices of*, 9 Q. B. 41.

MASTER AND SERVANT'S ACT.

1. *Commitment.*—A return to a *habeas corpus ad subjiciendum* set forth a document, being a conviction and committal under stat. 4 G. 4, c. 34, s. 3, which recited an information and complaint, by the agent of *D.*, that the prisoner had contracted to serve *D.* for a term, and did, before the contract was completed, "absent himself from his said service, and did thereby then and there neglect to fulfil the same, contrary to the form of the statute," &c.; and the document added,—therefore "it manifestly appearing to me" (the justice) that the prisoner "is guilty of the said offence charged upon him in the said information and complaint, I do hereby convict him of the offence aforesaid; and I do hereby order and adjudge that" the prisoner, "for the offence aforesaid, be imprisoned," &c.

Held, that the information showed no offence, as there might be some lawful excuse for the absence, though the statute simply makes the party's absenting himself from service the ground of complaint; and that the conviction was therefore bad. Prisoner discharged. *Turner, in re*, 9 Q. B. 80.

Case cited in the judgment: Rex v. Cordea, 4 Bur. 2279.

2. *Conviction.*—A return by the keeper of a house of correction to a *habeas corpus ad subjiciendum*, stated that the prisoner was in custody under a commitment, the tenor of which was as follows. A document was then set out, addressed to all constables, &c., and to the keeper, reciting that complaint had been made to a justice, on oath, that the prisoner had contracted to serve the complainant, and had absented himself from the service without his master's consent, before the contract was completed, contrary to the form of the statute, &c.; that the complainant was, "on the said 14th day of November," brought before the said justice and another justice to answer the complaint; "whereupon we the said justices, in pursuance of the statute," &c., "did then and there duly examine the proofs and allegations of both parties, touching "the matters of the said complaint, they having come before us for that purpose, and, upon due consideration had thereof, have, on the oath of the said" (complainant,) "taken in the presence and hearing of the said" (prisoner,) "adjudged and determined, and do hereby adjudge and determine, the said complaint to be true; and we do therefore convict the said" (prisoner) "of the said offence, in pursuance of the statute." The document then commanded the constables to take the prisoner to the house of correction, and deliver him to the keeper, "together with this warrant;" and the keeper was required to receive him, to remain and be held to hard labour for the space, &c.: "and for so doing this shall be your sufficient warrant." Given under the hands and seals of the justices, 14th November.

Held, no other document being before the Court, that this must be taken to have the double character of a conviction and commitment, under statute 4 Geo. 4, c. 34, s. 3; and that, as it did not set out the evidence (and, per Patteson and Williams, *JJ.*, as it did not in form adjudge any imprisonment,) it was bad in the character of a conviction. Prisoner discharged. *Hamsond, in re*, 9 Q. B. 92.

POOR.

1. *Transmission of examinations.*—On application for an order of removal, the justices, besides the witnesses produced on behalf of the removing parish, examined others at the request of an attorney who appeared for the parish to which the removal was to be made. This last evidence was not transmitted with the

other examinations, now taken down in writing. *Held*, that statute 4 & 5 Wm. 4, c. 76, s. 79, was sufficiently complied with by sending the other examinations. *Reg.* v. *Holne, Inhabitants of*, 9 Q. B. 70.

2. *Notice of apprenticeship under statute* 56 G. 3, c. 139, s. 2.—Where a pauper is bound apprentice under statute 56 G. 3, c. 139, it is sufficient, under section 2, if a notice of the intended binding, directed generally to the overseers of the parish into which the apprentice is to be bound, is served on one of such overseers. *Reg.* v. *Holne, Inhabitants of*, 9 Q. B. 70.

3. *Settlement.—Measurement of the* 10 *miles under statute.*—Statute 4 & 5 W. 4, c. 76, s. 68, enacts that no person shall retain a settlement, gained by possessing an estate or interest in a parish, for a longer time than he shall inhabit "within 10 miles thereof."

Held, where the pauper resided out of the parish, that these words mean 10 miles measured in a direct line from the residence to the nearest point of the parish. *Reg.* v. *Saffron Walden, Inhabitants of*, 9 Q. B. 76.

4. *Maintenance of insane persons.—Jurisdiction.*—Two justices of the county of *R.*, assuming to act under stat. 9 G. 4, c. 40, directed the parish officers of *H.*, in that county, to pay certain sums to the keeper of a house for the reception of insane persons in the county of *S.*, for the maintenance of an insane person, whose settlement they, by the same order, adjudged to be in *H.* *H.* made payments under this order, but appealed; the order was confirmed at Sessions; but, on a case reserved, the orders of justices and of Sessions were quashed by this Court, on the ground that the two justices of *R.* had no jurisdiction.

Held, that this Court could not award a mandamus, calling upon the justices of *R.* to direct their county treasurer to repay to *H.* payments which that parish had made under the first-mentioned order from the time of its being granted to the time of its being quashed. *Reg.* v. *Radnorshire, Justices of*, 9 Q. B. 159.

5. *Costs on showing cause in first instance.*—Where the Poor Law Commissioners, under the privilege given by stat. 4 & 5 W. 4, c. 76, s. 106, show cause in the first instance against a motion for a certiorari, and succeed, the Court will grant them costs, if proper ground appear for it, though the general rule of practice is, that a party showing cause in the first instance shall not have costs. *Reg.* v. *Poor Law Commissioners, in re St. Mary Abbots*, 9 Q. B. 291.

6. *Order for building workhouse.—Majority of guardians.*—Where, by order of the Poor Law Commissioners, under stat. 4 & 5 W. 4, c. 76, s. 39, guardians are appointed to administer the Poor Law in a single parish, the consent to an order for building a workhouse in such parish, under section 23, must be given by a majority of the guardians, as it is in the case of a union under section 38; and not by a majority of the rate-payers. *Reg.* v. *Poor Law Commissioners, In re St. Mary Abbots*, 9 Q. B. 290.

RATES.

See *County Rate.*

REPLEVIN.

Avowry for rent arrere at common law.—Before statute 8 Ann. c. 14, s. 6, rent, accruing before the expiration of a tenancy, could not be distrained for after the tenancy expired, though the tenant continued in occupation.

Therefore, where an avowry for rent arrere is framed at common law, it must be alleged and proved that the tenancy continued up to the time of the distress. *Williams* v. *Stiven*, 9 Q. B. 14.

REQUESTS, COURT OF.

See *Court of Requests.*

SHERIFF'S OFFICER.

Arrest.—Officer to inform defendant that he may go to a dwelling-house.—Under stat. 32 G. 2, c. 28, s. 1, a sheriff's officer making an arrest must not carry the party to prison within 24 hours, unless such party has been informed that he may, if he will, be carried to a safe and convenient dwelling-house of his own nomination, and has refused to nominate. And it is not a refusal, if the party, without being so informed, asks if he may go to a spunging-house, and, being told that there are none, makes no further proposal, and suffers himself to be taken to one of two prisons previously named by the officer.

In an action for penalties under the statute, the declaration alleging that plaintiff was carried to Whitecrosse Street prison without his free and voluntary consent, although he did not refuse, &c.; to which not guilty was pleaded; the evidence being that plaintiff went to prison under the circumstances above stated; and there being proof that he went there for the purpose of enabling himself to recover damages; particularly, that he had told his creditor after the arrest that if an arrangement were declined he would go to Whitecross Street prison: *Held*, that the judge directed the jury properly on the issue joined, by desiring them to say whether plaintiff went to prison for want of being informed of his right to go to a house of his own nomination, or whether he elected, for purposes of his own, to go to prison. *Gordon* v. *Laurie*, 9 Q. B. 60.

Cases cited in the judgment: Simpson v. Renton, 5 B. & Ad. 35; Dewhirst v. Pearson, 1 Cro. & M. 365; 3 Tyr. 242; Silk v. Humphery, 4 A. & E. 969.

TITHES.

Appeal.—To entitle a landholder to bring an action by way of appeal against a decision of an assistant tithe commissioner, under the 6 & 7 W. 4, c. 71, directing tithes to be paid in kind, the yearly value of the payment to be made *by him* thereunder must exceed 20*l.*

And *semble*, that, in estimating such value, he is not entitled to take into the account lands held by him as tenant in common with another who is no party to the appeal.

The landholders of a parish set up before the Commissioner a *modus* of 2*d.* per acre: the asserted value of the tithes in kind payable under the award was 9*d.* per acre: *Held*, by Coltman, Maule, Cresswell, and V. Williams, JJ., (*absente* Wilde, C. J.,) that "the payment to be made or withholden according to such decision," was the *difference* between those two sums. *Matthews* v. *Leapingwell*, 3 C. B. 912.

Case cited in the judgment: Flanders v. Banbury, cited 1 C. B. 678.

BUSINESS OF THE COURTS.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER HILARY TERM, 1849.

Queen's Bench.

Middlesex.

R. Sydney	Cahill	S. J.	Macdonald (stayed)	Dt. Bolton
Johnson, Son, and W.	Rowe		Cope (stayed)	Prom. Chester
S. B. Hamer	Davies	S. J.	Wilkinson (stayed)	Prom. Howard
M. Fraser	Williams	S. J.	Whiteway (inj.)	Prom. Mardon and P.
Adlington and Co.	Bastone and another		Ross (inj.)	Dt. Chadwick
Elderton and H.	Fiddes		Wm. Toogood (inj.)	Prom. Campbell and A.
Johnson, Son, and W.	Crowther, admix., &c. (inj.)		Edwards and another, surviving executors	Dt. Williamson
Becke	Becke		Parish and another	Dt. Helme
Jno. Lewis	Moon (stayed)		Connop	Pro. Lewis
Thomas M. Parker	Clerk (inj.)	S. J.	Hughes	Pro. Burrell
Ablett	Neal		Ward (inj.)	Pro. Carlon and H.
Oliverson and Co.	Doe d. Peacock	S. J.	Frere	Eject. Vizard and Co.
Everest and Co.	Clutterbuck		Carter (inj.)	Pro. Bell
Wontner	The Queen		Johnson and others	Indt. E. Lewis
Wm. Day	Dawson	S. J.	Macken	Pro. Wright and Co.
Ivimey	Dowling	S. J.	Becke	Pro. Blake and Co.
Kingdon and S.	Carpenter		Bowen	Dt. Young and Son
Wyche	Flocton and others	S. J.	Melladew and others	Ca. G. Fry
Sutcliffe	Foster	S. J.	Loftus	Covt. Lethbridge and M.
Same	Swindall	S. J.	Dawson	Covt. Lewin
Same	Foster	S. J.	Dawson	Covt. Lewin
Same	Swindall	S. J.	Loftus	Covt. Lethbridge
Nixon	Ghislin		Gregory and another	Tres. Hodgson and B.
C. Fiddey	Jeffs and wife	S. J.	The Midland Railway Co.	Ca. Parker and Co.
Wing and Du Cane	The Dublin and Belfast Junction Railway Company	S. J.	Cheveley	Dt. Greenwood
Same	Same	S. J.	Same	Dt. Same
Wright	The Queen	S. J.	Powell	Ejt. Hughes
Dawes	Same	S. J.	Fontainemoreau	Indt. Hobler
Cookney	Horner	S. J.	Amsinck	Dt. Johnstone, F. & L.
Allen and M.	Doe dem. Parker and ors.	S. J.	Constable	Thos. Kirk
Kearns	Wood	S. J.	Elliotson	Pro. Smith and Son
Kinder	Ryan		Clark and another	Tres. Smedley and R.—Canham in person
Humphrys	The Queen	S. J.	Walker and another	Indt. Watson, B., & Son
Yallop	Kymer	S. J.	De Winter and others	Ca. Jno. Williams
Warneford	The Duke of Brunswick and Luneburg	S. J.	Harmer	Ca. A. R. Steele
Willis	Allanby and others	S. J.	Tomkins	Ca. J. and W. Vallance
J. Abbott	King	S. J.	Bunn	Pro. Evans
R. Richards	Penfold	S. J.	Lord, clk.	Trees. Pontifex and M.
Gregory, F., and Co.	Bennett	S. J.	Gibson	Ca. L. Hicks
Feron and C.	Sopwith and others	S. J.	Howell	Pro. Lawrence and Co.
J. S. Arnold	Arnold	S. J.	Bowes	Dt. Weston and Son
Wm. Lane	Lane and others	S. J.	Hooper and another	Ca. Kilgour and P.
Gregory, F. and Co.	Houghton	S. J.	Mousley	Pro. J. S. Gregory
Hoskins	Ruck		Whelan	Tres. M. Lewis
Hodgson and B.	Parratt and another		Attwood	Dt. Holme and Co.
Walker, G. and Co.	Doe dem. Conant	S. J.	Hurst and others	Ejt. Wire and Child
Rawlings	Beakin	S. J.	Hamilton	Pro. Hardwick and D.

Warneford	Duke of Brunswick and Luneburg	S. J.	James	Ca. H. W. Vallance
Keene	Knowles	S. J.	Halse	Tres. Campbell and W.
Code and Co.	The Queen	S. J.	Sievier	Sci. fa. Wight
Fladgate and Co.	Doe dem. Jones	S. J.	Ashwells & another, exors.	Ejt. King and A.
In person	Crafts		Hartopp, clk.	Pro. Parke and Co.
Lewis and L.	Potter and another	S. J.	Jerdein	Pro. Dickson and O.
H. Walker	The Dean and Chapter of Christ Church, Oxford	S. J.	Hicks	Dt. C. Blake
R. C. Barton	Whitmore and others, assignees		Mortan	Dt. Raven and B.
Hodgson and B.	Gregory and wife		Duff	Dt. J. Bell
Allen and M.	Smith	S. J.	Brown and another	Dt. Paterson
R. C. Barton	Whitmore, assees., &c.	S. J.	Norton	Pro. Raven and B.
John Pike	Sharpus		Hart	Covt. Cary
Branscomb	W. W. Gent	S. J.	Hill	Pro. Anderson
Same	J. S. Gent	S. J.	Same	Pro. Same
Ford and L.	Pierce	S. J.	Delafield and another	Dt. Pike
B. Hope	Hoare (pauper)	S. J.	Coupland	Ca. Walker
G. Brown	Pratt	S. J.	Hanbury	Tres. Parnell and T.
G. Clark	Sheppy	S. J.	Porter, exor., &c.	Pro. Waller, jun.
Trinder and D.	Doe d. Day		Whitfield	T. and E. Corpe
Miller	Miller	S. J.	Reynolds	Dt. In person
Coppock	Chard	S. J.	Fox	Pro. C. E. Lewis
Watson B. and C.	Hird		Moyes	Dt. Dodds
Fearon and Co.	Middleton		Dalton	Dt. J. and C. Cole
Tooke and Son	Unett		Molladay	Dt. Pittendreigh
Wiglesworth	Waddy		Waine	Pro. Rickards and W.
Hodgson and B.	Gregory and wife, administratrix, &c.		Samuell	Covt. Beart
Cutler	Pilcher		Dearden	Dt. Capes and S.
Elderton	Cameron's Coalbrook Steam Coal and Swansea and Loughor Railway Co. Registered	S. J.	Wyche	Dt. In person
Lane	Eden, jun.		Eden, sen.	Pro. Withall
Towsey	Newland		Getting	Dt. Lloyd
Reed and Co.	Inman and another	S. J.	Bevan	Cov. Jay
Cooke	Douglas		Wilbraham	Pro. Buchanan
Charles Dod	Dod		Cobbett, jun., and another	Dt. Nicholson and P.
Johnson	Arden	S. J.	Smith	Dt. L. Norton
Wathen and P.	Smith		Mead	Dt. Charles Barham
Cunningham	Strutt	S. J.	Lowndes	Ca. Currie and Co.
Henderson and L.	Townshend, commonly called "Lord C. V. F. Townshend	S. J.	Foley	Hird and Son
King and A.	Harrison		Eve	Philipe
Hicks	Reynolds		Guy	Pro. S. Smith
Aplin	Gardner and another		Burton	Dt. N. Bennett
Sargent	Reece		Slack and another	Pro. Vincent
Same	Best		Davis	Pro. Overton and H.
Kingdon and S.	Whitenbury		Gadsden	Dt. E. Clarke
Miller	Lewis, executor, &c.		Dawson	Dt. Norton and Son
Vallace and V.	Chesnay	S. J.	Lomer	Pro. Martin and Co.
Pickering and Co.	Conway	S. J.	The Great Western Railway Company	Ca. Maples and Co.
E. W. and S. Raines	Malpas		Clements	Pro. W. Lane
Plumptre	Hales		Firmipger	Covt. Hodgson
Bircham	Rumbelow		Whalley	Dt. Baxter and B.
G. Archer	Elves		Rickman, jun.	Pro. H. T. Roberts
Johnson, Son and W.	Lamb		Rogers	Pro. Philp
Shearman	Thorp, extrix.		Feaver	Pro. Mayhew
C. Harriss	Harris and others	S. J.	Dummelow and another	Pro. Lloyd for D.—Neal for B.
Sole and T.	Wolton	S. J.	Gavin	Tres. Derby and R.
Fearon and C.	Atkinson		Willcock	Pro. Penkivill
H. B. Roberts	Rose		Patching	Dt. Edmonds
Beales	Robinson		Brewer	Pro. Trebern and W.
J. Lewis	Goldsworthy		Finnes, esq., and others	Tres. Haynes and Co. and Billing
Warneford	The Queen		Gregory	Indt. Lewis and L.
Jaques and Co.	Holiday		Fawcett	Ca. Rickards and W.
Foord	Crosby		Pery	Dt. Reckham and W.

Robins	Mann and others	Walker	Davies and Co.
John Bell	Richard	Davies	Ca. Brundrett and Co.
Frankish	The Queen	Wadsworth	Indt. Ablett
Wyatt	Doe dem. Sheppard	Yeoman	Ejt. Stanley
William Smith	Adams	Warton and another	Pro. Orchard
Same	Stone	Same	Pro. Same
Bickley	Leighton	Hamilton	Dt. Hammond
Same	Mitchell	Same	Dt. Same
Monkhouse	Adams	De Bargh	Pro. Francis
Warneford	The Queen	Gregory, indicted with ors.	Indt. Lewis and L.
C. Robson	Parr	Price	Pro. Freeman and Co.
John Taylor	Doe sev. dem. Rumball and others	Jaques	Ejt. Heath, jun.
Strutt	Parratt	Damer	Pro. Amory and Co.
Canningham	Strutt	Whitcombe	Dt. Meredith and R.

London.

D. Richardson	Mackay	(Inj.)		Brooke	Trea. Baxendale and Co.
Capes and S.	Blackmore	(Inj.)		Burton & ors., exors., &c.	Dt. Alban and B.
Keene	Dean	(Inj.)	S. J.	Grace	Dt. Smith
Vincent and S.	Franklin & another	(stayed)	S. J.	Davis and others	Covt. Wm. Bevan
Lewis and L.	Brand	(stayed)		Harper	Pro. Few and Co.
W. H. Green	Bond	(Inj.)	S. J.	Stanley	Prom. Few and Co.
Phillips	Hartley & another	(stayed)		Manton	Van Sandau & Co.
Pearce and Co.	Robertson	(stayed)	S. J.	Dargan	Covt. Norris and Son
C. B. Wilson	Gibbs	(stayed)		Aberdeen	Covt. Gilbert, Hook, & Co.
Jordeson	Cundell	(stayed)		Harrison and others	Pro. Chester and Co.
Hook	Conyngham, Esq., and others		S. J.	Macgregor	Pro. Tilleard and Co.
Warter	Sherlock and another		S. J.	Browne	Pro. Campbell and W.
Starling	Newman	(Inj.)		Parry	Hughes, K. and M.
R. and W. G. Roy	Walker		S. J.	Satterthwaite	Pro. Vizard and Co.
Horwood	Edgar			Beck	Pro. Reddell
Cox and Co.	Jegon			Long	Dt. Hartley
R. and W. G. Roy	Harvey, (P. O.)		S. J.	Brooke	Sci. Fa. Van Sandau & Co.
Freeman and Co.	Bird and another		S. J.	Smith, secy, &c.	Freshfield
Linklater	King			Liquoriah	Howell
Sewell and F.	Nickols		S. J.	Kempton	Dt. Wire and Co.
Reyroux and B.	Roberts and others		S. J.	Allan	Dt. Van Sandau and Co.
Sewell and F.	Elliott		S. J.	Lewis	Pro. Wilkinson and G.
Wilkin	Sturt			Day	Pro. Holt
Thrupp	Watkins			Price	Dt. Homfray
Rushworth	Foster			Stead	Dt. Taylor
Lawrence and Co.	Gurney and others		S. J.	Smith and another	Pro. Maples and Co.
Watson and Co.	Hooper		S. J.	Leaf	Dt. H. Lloyd
Baker and Co.	Barry		S. J.	Hill	Pro. Gregory and Co.
R. and W. G. Roy	Shrewsbury and Birmingham Rail. Co.		S. J.	Hopkinson	Dt. S. Moores
Hodgson and B.	Nisbet		S. J.	Oliveira	Pro. Fry and Co.
Same	Murray		S. J.	Same	Pro. Same
Wm. Smith	Barford		S. J.	The Legal and Commercial Fire Assurance Society	Covt. Brace and Co.
Harris (in person)	The Queen		S. J.	Lloyd	Indt. Gates
R. K. Lane	Howard		S. J.	Moore	Pro. Tilson and Co.
Jaques and Co.	Garvie		S. J.	Shearman	Pro. In person
Fearon and Co.	Parratt		S. J.	The Duke of Buckingham	Trea. Strutt
Gates	Lloyd			Atkinson	Pro. Graham
Blales	Strickland			Smith	Pro. Becke
Wiglesworth and Co.	Goding		S. J.	Sir John Hare	Pro. Davies, Son, and Co.
Vardy	Wilson		S. J.	Spurgeon	Pro. G. Bower
G. F. Hudson	Graham and others			Page	Tro. Wright
Hindmarsh and E.	Calvert			King	Pro. Bassett
J. W. P. Scott	The Queen		S. J.	Killick and two others	Asst. Philp
Few and Co.	North American Colonial Assn. of Ireland		S. J.	Bentley	Dt. W. Lake
Lucena	Mallett			Palmer	Pro. Flower.
Same	Johnston, jun.			Balcombe	Pro. Goddard and E.
Same	Lucena			Clements	Pro. Hughes, K., and Co.
Hindmarsh and E.	Groom and another, assignees, &c.			Marsh, Esq.	Trov. Amory and Co.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 14, 1849.

——"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

BILLS BEFORE PARLIAMENT RELATING TO THE LAW.

THE adjournment of the two Houses of Parliament for the Easter recess, affords a convenient opportunity for an enumeration of the bills relating to the law introduced since the commencement of the Session. It is, perhaps, matter of congratulation, that no bill of any importance connected with the administration of justice has yet received the Royal assent, for the passing of such measures, at so early a period of the Session, would indicate a degree of haste and an absence of mature deliberation, from which no very satisfactory results could be anticipated.

The only acts in which the legal profession can be supposed to feel any peculiar interest, which have yet become law, are: 1st. The Act for Authorising a more convenient Place for holding the *Buckinghamshire Assizes*, (printed p. 407, *ante*.) 2ndly. The Act to Remove Doubts as to the *Appointment of Overseers in Cities and Boroughs*, (printed *ante*, p. 448); and lastly, the *Larceny Acts Amendment*, to which the attention of our readers was directed shortly after it was presented to the House of Lords by Lord Campbell. It will be found upon reference to this statute, p. 471 *post*, in the present number, that various alterations were made in the bill during its progress through both Houses, and that the provision depriving the criminal courts of all discretion in awarding the punishment of transportation in cases of simple larceny however aggravated, the expediency of which we venture to doubt, has been materially modified, and rendered less objectionable by the amendments subsequently introduced.

Although the actual amount of legislation has been thus limited, there are numerous bills promised, or in progress, which not only invite but imperatively demand professional scrutiny and vigilance. Amongst the most important, we should class *the Charitable Trusts Bill*, which passed through the House of Lords last Session, under the auspices of Lord Cottenham, but was stopped in its passage through the lower House towards the close of the Session, and has now been introduced by the Solicitor-General, in the House of Commons. We have reason to believe it has not yet been printed, but from what is reported to have fallen from the Solicitor upon moving for leave to bring in the bill, we infer that its provisions are nearly, if not altogether, similar to those contained in the bill sent down from the House of Lords last Session, and which then formed the subject of repeated commentaries in this publication. The bill stands for a second reading on Monday the 30th April, and we propose to take an early opportunity of recalling attention to the extensive changes in the administration of charitable trusts which would be produced by its enactments.

The *Copyholds Enfranchisement Bill*, the object of which, as our readers are already aware, is to effect the compulsory enfranchisement of lands of copyhold and custo-

mary tenure, has also been presented again to the House of Commons, and the second reading is fixed for the 17th April.

Amongst the bills actually before Parliament, and falling under the description of law bills, we must not omit to notice the bill introduced by Mr. Mullings to extend the *Remedies of Sequestrators of Ecclesiastical Benefices*, and Mr. Roundell Palmer's bill, "to authorise in certain cases, the *Partition or Sale of Chattels* personal, held in joint tenancy or tenancy in common." The Sequestrator's Remedies' Bill has undergone some alterations in Committee, and is to be again considered, in its amended form, on Wednesday the 25th April. The Chattels Partition and Sale Bill, stands for a second reading on the 2nd May. Although the object of the bill is of a limited nature, it is not the less deserving of attention from practical men.

The second edition of Mr. Moffatt's bill, "to Amend the Law of Bankrupt Members of the House of Commons, and to Vacate the seats of Bankrupt and Insolvent Members of the House of Commons, and to Facilitate the Recovery of Debts from such Members," is fixed to be read a second time on Wednesday, the 2nd May; and Lord Brougham has introduced a somewhat similar measure, which is meant to affect the Members of the House of Peers, who are insolvent; and to put them on the same footing as insolvent Commoners. This measure, as we ventured when it was first introduced, to anticipate, has been more popular out of doors than within the walls of Parliament, and unless it be brought forward as a government bill, it is extremely improbable that it will be successfully carried in the face of the formidable opposition it has to encounter.

Amongst the bills not yet introduced, but promised shortly after the recess, are Mr. Ewart's bill, to Repeal the *Punishment of Death*, a proposition which, in the present state of public feeling on this subject, we do not expect will obtain very general support in or out of Parliament. The same Hon. Member has also given notice of his intention to introduce a bill, to *Amend the Marriage Act*, (7 Wm. 4,) so far as it renders necessary the giving a notice to the Superintendent Registrar and the issuing of a certificate by him. Notice is given by Mr. Wyld of a bill, "to Explain and Amend the Law Relating to the Holding of *Inquests* or Courts of Inquiry, *in Cases of Fire* within the United Kingdom;" and a notice by Mr. Headlam of a bill "to Render Lawful the Formation of Incorporated *Joint Stock Banks*, based upon the principle of a *Limited Liability of the Shareholders*," a subject, not exactly of a professional nature, but one which the protection of the public renders it desirable should be well considered by competent lawyers before any change is made in the existing law.

To some of the measures enumerated we shall hereafter have occasion to refer more in detail, and have in a separate article noticed the Attorney-General's Bill for the Administration of Justice in the Metropolitan District, including the Central Criminal Court.

ADMINISTRATION OF JUSTICE IN THE METROPOLITAN DISTRICT.

The Attorney-General, in conjunction with the Solicitor-General, shortly before the adjournment of the House of Commons, laid on the table of that house a bill entitled, "An Act to facilitate the Administration of Justice at the Central Criminal Court and at Sessions of the Peace in and near the Metropolis;" the object of which seems to be, *to dispense with Grand Juries in certain cases*. This measure proceeds upon the assumption, that within the Metropolitan Police District, criminal charges are in general made in the first instance before, and examined into by, a responsible magistrate, and therefore the intervention of a grand jury previously to trial, may in such cases be safely dispensed with. This view is supposed to be supported by some returns recently printed, from which it appears, that in the year 1845, the total number of bills of indictment preferred at the Central Criminal Court was 2,817, and of that number 2,763 were cases previously examined into by a magistrate, and in 2,660 of these cases the grand jury found "a true bill." In 1846, the number of bills preferred was 2,787, of which the number of cases previously inquired into by a magistrate was 2,735, and the proportion returned "true" was 2,619. In 1847, the proportions were nearly similar: in that year, 3,812 bills were preferred at the Old Bailey, 3,229 of which were cases that had previously gone before a magistrate, and 3,056 were returned "true." It also appears, from presentments made by successive grand juries, for the Sessions of May, June, and July, 1848, that the persons composing those bodies recorded their deliberate opinion, that no public benefit resulted from their labours, in any degree

commensurate with the inconvenience and disadvantage arising from the re-examination of prosecutors and witnesses who, for the most part, had previously been more effectively examined in the presence of a magistrate. Under those circumstances the present bill has been introduced, rather, we presume, by way of experiment, than with any intention of permanently establishing the anomalous and unsatisfactory system which its provisions would create. A glance at the proposed enactments, which we subjoin, will show, that although the functions of a grand jury would be in a great measure abrogated, and the grand inquest would have little to inquire into, still it is intended to preserve its existence, for the act is not to apply at all to charges in respect of certain specified offences, and in other cases, where a magistrate certifies that it is unnecessary to present a bill to a grand jury, the Court may, nevertheless, order such bill to be presented. At every Session, therefore, there must still be a grand jury, and no person who has heretofore been summoned upon a grand jury will be relieved by this act from the duty of attendance.

The following are the material clauses of the bill.

Section 1 enacts: "That" (after a day to be named) "no bill of indictment shall be presented to or received by a grand jury, at the Central Criminal Court, or at any Session of the Peace holden within the metropolitan police district, unless the charge in respect whereof such indictment is or may be preferred shall have been previously made before a magistrate sitting at one of the police courts of the metropolis, or before a magistrate of the city of London sitting at a public justice room within that city, and the magistrate before whom any such charge is made shall certify the fact of the charge having been made, together with the result of the same, at the end of the examinations in each case."

Section 2 enacts, that after the passing of this act, whenever any magistrate within the metropolitan police district, or within the city of London, "shall commit to custody or hold to bail any person charged before him with any criminal offence to be tried at the Central Criminal Court, or at any Session of the Peace holden within the metropolitan police district, and shall be of opinion that it is unnecessary to present a bill of indictment in respect of the charge to a grand jury, he shall certify such opinion on the commitment or detainer or recognizance (as the case may be) in the form contained in the schedule to this act annexed, or in some other words to the like purport and effect; and whenever such certificate is granted, the prosecutor or other person preferring the charge referred to therein, shall not present any bill of indictment to a grand jury, unless the court at which the charge is to be or may be tried shall, either before or after the filing of the information hereinafter mentioned, otherwise direct."

Section 3, enacts, "That whenever a certificate shall have been granted as last aforesaid, the clerk, or other proper officer of the court at which the charge in respect whereof the certificate is given is to be tried, shall be put upon the files of such court an information in the form contained in the schedule to this act annexed, or in some other words to the like purport and effect; and every information so filed, shall be as and in lieu of an indictment found by a grand jury to all intents and purposes; and all proceedings for the trial of the party charged thereby shall be had and taken in the same way as if such information had been an indictment found by a grand jury, and the law for the time being applicable to indictments so found, and the proceeding thereon, shall be applicable so far as can be to every such information, and the proceedings thereon; and after the party charged by any such information shall have pleaded thereto, no other objection shall be allowed thereto than such as would by law be allowed against an indictment found by a grand jury after plea; and no such information shall be quashed, vacated, or set aside, nor shall any person charged thereby be acquitted, by reason that the offence specified in the commitment or detainer, or for which he was held to bail, provided such information be applicable to the facts appearing upon the examinations returned to the Court; and in making up the record of the proceedings had or taken upon any such information, or in any order made thereon, or in the course of any such proceedings, it shall not be necessary to set forth or refer to the magistrates certificate, or order of the Court, in pursuance whereof such information was filed."

Section 4 provides, "That whenever it shall appear to the Court at which the trial is to be or may be had that any charge against any person in custody, or under recognizance to answer at such Court, may properly be brought to trial without presenting a bill of indictment to a grand jury, such Court may order the proper officer to file an information in manner and form aforesaid, although no certificate may have been given by a magistrate in that behalf. and the provisions of this act with respect to informations filed upon the certificate of a magistrate shall be applicable to informations filed in pursuance of any such order: Provided also, that if the Court at which the trial is to be or may be had shall order that a bill of indictment be presented to a grand jury notwithstanding the certificate of a magistrate as aforesaid, a bill of indictment shall be so presented accordingly, and proceedings had and taken thereon in the same manner in all respects as if this act had not been passed, and in such case any information filed under this act shall be quashed."

And section 5, provides, "That nothing in this act contained shall apply to any charge in

respect of the offences," of treason, misprision of treason, blasphemy, and offences against religion, composing, printing, or publishing blasphemous, seditious, or defamatory libels, offences against the Queen's title, prerogative, person, or government, or against either House of Parliament; or offences subject to the penalty of a præmunire.

STATUS OF THE SEVERAL BRANCHES OF THE PROFESSION.

ADVOCACY IN INFERIOR COURTS.—OFFICIAL APPOINTMENTS CONFERRED ON BARRISTERS AND ATTORNEYS.

In the early part of the present volume, we had occasion to notice an important controversy between some members of the junior bar and the provincial solicitors practising as advocates in some of the smaller Courts of Quarter Sessions.[a] And subsequently a question on the right of attorneys to plead in the Bankruptcy Court was raised by a writer in *The Law Review*, in an article on "the Province of the Bar."[b] The discussion on that topic was continued for several weeks,[c] and it would appear, from the silence of the writer in the subsequent number of the Review, that our answer was deemed satisfactory, and that in the Bankruptcy Court, at least, solicitors are entitled by law to "plead" as well as "appear."

A second article on "The Province of the Bar in England," was published in *The Law Review* for February, to which we have hitherto been prevented from calling attention by various circumstances; but we must not permit this volume to close without a brief notice of some important points concerning the several branches of the profession which are discussed in that paper. The editor justly remarks, in a note on the article before us, that "it is the interest of the public to secure the services of learned, able, and honest lawyers, to do for them what they cannot do so well for themselves;" and he adds, that "it is only by full *inquiry* that we can ascertain how the exertions of such a class can be best secured." This is the right view of the subject: "*the interest of the public*" is the test to which we would submit the question lately mooted by the provincial solicitors regarding their right of advocacy in certain local and inferior Courts, and other topics which affect the interests of the profession in general.

The learned editor remarks, that the *Law Review* does not attempt to represent any branch or section of the profession, and that communications have been received, which in due time will be laid before the readers of that journal. It appears that its pages are open to the candid discussion of each side of the various important questions which interest, not only the several branches of the profession, but the public in general; and it is but justice to admit that the work is conducted towards all classes with due impartiality, and with much learning and ability. It goes farther in its views of law reform than we think safe or wise; but its propositions are always fairly and candidly stated and amply discussed; and in the paper under consideration, the reviewer disclaims the most remote wish to give offence to any portion of the legal profession.

To the greater part of the statements contained in this second article on the Province of the Bar we willingly assent. It is no part of our design to lower the status of the Bar; we would rather elevate it to a still higher position. We are for upholding and advancing the dignity of the *whole profession*, composed of its three grades,—the Judges, the Bar, and the Attorneys. The legal should resemble the clerical and medical professions, consisting of several parts, differing in rank and degree, but forming one general body.

The historical parts of the disquisition we do not question, so far as they extend, but it is forgotten, or omitted to be noticed, that by many ancient rules of Court, down to little more than a century ago,—not the barristers only, but—the attorneys were required to belong to the Inns of Court or Chancery, and to come into Commons a certain number of days in each Term; and that it is only within the present age that attorneys and solicitors have been excluded from association in the halls of these ancient societies. If there be good ground for preventing the members of one branch of the profession from passing immediately to the other, let a reasonable time be fixed;[d] but let them, in the meantime, be admitted for purposes of study and preparation, without restraint, as members of one general profession.

It is urged by the writer in the *Law Review*, "that the *barrister* in this country

[a] See p. 61.
[b] Law Review, for November, 1848.
[c] Pp. 83, 104, 123, 142, *ante*.

[d] The restriction of a call to the Bar used to be *two* years: it is now in effect *five*.

is the recognized professer and expounder of the law of the land, who by ancient and recognized usage is *entitled to be heard as an advocate* in our Courts or in any branch of the practice of the law where legal knowledge is required." We fully admit this claim; but we deny, as well for "the public interest" as for the rights of the attorneys, that the barrister is entitled to *exclusive* audience in *all* Courts.

It is said, "that the *creation of another class of practitioners* of the law is an obvious innovation, and that attorneys and solicitors who, from being *mere officers* of the Court, have become general practitioners of the law, have in the course of their transition imperceptibly encroached on the legitimate province of the Bar."

Surely there is here a great misapprehension of the true state of the facts. The "*mere* officers" alluded to, were, we presume, the "Clerks in Court," or "Side Clerks," through whose medium the pleadings and formal proceedings in Court were conducted, and whose offices in the several Courts have one by one been abolished; but besides these Clerks in Court, or Side Clerks, there was a body of practitioners under the name of "Attorneys *at large*," or *in general*, as distinguished from those who acted only as attorneys in *Court*, the latter being employed and instructed by the former, as were the Sworn Clerks in Chancery, and the Clerks in the Crown Office, and until the other day in the Petty Bag Office.

So far from the supposed *innovation* of another class of practitioners, the ancient Rules of Court, as well as the statutes, commencing with the Statute of Merton in 1235, provide for the due instruction, examination, and enrolment of attorneys at law. They were stated on the records of the Court to be "put in the place" of their clients the suitors, and as the suitors to the present day are entitled to be heard in person, it is manifest that the attorneys who were so *put in their place* by the old statutes were entitled to audience on their behalf. As in the County Courts to the present time, so anciently in the Superior Courts, the attorneys, no doubt, fully represented their clients, until the extent and magnitude of the business gradually called for a regular order of barristers. Even in modern times the attorneys were entitled to make motions of course at the "Side Bar" of the Court.

The "innovation" would be to compel the suitor to incur the expense of employing counsel on all occasions and in all Courts. The attorneys have been accustomed, time out of mind, since the first Commission of Bankruptcy was issued, to attend and conduct the whole business of their clients before the Commissioners. Even in the recent proposal to raise the Commissioners to the rank of Judges, it was not intended to exclude the attorneys from their usual course of practice, but, on the contrary, to re-enact the provisions of the Bankrupt Court Act, continuing the right to appear and plead without counsel. It was also the practice to nominate solicitors in Commissions of Bankruptcy. In London the proportion was small, but in the country they formed the majority of each List of Commissioners. The attorneys, also, immemorially practised as advocates in the Borough Courts throughout the kingdom, in many of which, such as Liverpool, there was a large amount of important business. They also had the right of pleading before the sheriffs, or their assessors, on writs of inquiry, which were often of much importance. So in the Provincial Courts of Quarter Sessions, as well as at Petty Sessions, the attorneys were also accustomed to act as advocates.

It seems clear, therefore, that, so far from any encroachment by attorneys and solicitors on the "legitimate province of the Bar," the course of modern legislation and practice has been to deprive the attorneys of many of the opportunities they formerly possessed of serving the interests of their clients as advocates in the Inferior Courts. Perhaps it would be in vain to contend against these encroachments, considering the power and influence which the Bar possesses in parliament and elsewhere, but here the interest of the public, in the administration of justice, goes hand-in-hand with the claim of the attorney to the maintenance of his ancient rights, and sooner or later justice will be done.

We are not inclined to dispute the claim of the barrister as "the recognized professor and expounder of the law of the land." His *opinions* carry with them deserved weight, and in many instances are of very high value. He might take even much higher and more solid ground than he does. By sound, comprehensive, and well-arranged Lectures, he might raise the character of the profession, and the law itself as a *science*. But his ambition is bounded by achieving works of immediate utility, which fetch their reward in the legal market. In the other learned professions,

a large proportion of their members are really devoted to public professorships, though receiving but little recompense, save in the prospect of future reward and the honour of their calling.

When speaking of the "expounders of the law," it must not, however, be forgotten, that for one case submitted to the opinion of counsel, fifty at least are investigated, considered, and advised on by attorneys, and their advice followed. How important, therefore, it is for the *public interest* that every possible inducement should be held out for the cultivation of the legal knowledge and abilities of the larger branch of the profession, upon the competency of which the welfare of the community very materially depends.

It is proper to look at all sides of the question, and we therefore anticipate, it may be said, that those smaller Sessions of magistrates and the Inferior Courts may afford a preparatory school for young barristers. But we trust they will not lower their position by such a claim. No one disputes their right to be heard wherever an advocate is required in any Court, however limited or obscure. The question turns, not on their exclusion, but on the *equal audience* of the attorneys. Let us call to mind the numerous Courts wherein the Bar confessedly possess *exclusive* audience.

1. All the Superior Courts of Law and Equity, in which there is, or ought to be, a junior retained on every occasion. In many cases there are several juniors, and, according to the good old practice, the juniors ought to argue all questions at law. On all motions of practice and others not of considerable importance, the juniors alone should be employed, and where the case will not afford two counsel, it should be at the option of the attorney to employ the junior, without forfeiting the retainer of the leader.* 2. The Nisi Prius and Assize Courts. 3. The Central Criminal Court. 4. The several Quarter Sessions in the Metropolitan District. 5. The several Quarter Sessions in all the Cities and large towns throughout the kingdom. These large fields for winning forensic laurels they possess exclusively; and whenever in the Inferior Courts the cases are of sufficient importance to justify the attorneys in delivering briefs, their duty and their interest will impel them to do so.

Surely here are nurseries enough for the talent and eloquence of the Bar and the display of all their legal knowledge and the result of their tact, experience, and sagacity. It comports, indeed, more with the rank and dignity of their order to limit their regular attendance as advocates to the Superior Courts and larger Sessions, and to appear in the Inferior Courts only when specially retained. This course would settle the question, to the satisfaction, we believe, of the great body of the junior Bar.

Our contemporary observes, that "Questions as to the number of *new offices* which have been created, or fresh advantages conferred on members of the Bar, or *old offices* given to them which were formerly conferred on attorneys and solicitors, are, after all, of little moment to the great majority of the Bar or the attorneys." This is quite true so far as respects the *emoluments* of these offices, whether old or new; but it has been very generally felt by the attorneys that in the constitution of various Boards of Commissioners, and of the new County Courts, and in the exercise of the patronage, as well in them as in the previous Courts and official posts of honour, their fair claims have been unjustly disregarded and the public service injured and neglected. They have therefore protested, not merely against the pecuniary loss which a few of their body may have sustained, but at the disparagement with which the body in general has been treated by declaring them ineligible to hold offices of no very eminent rank, and to which young men at the Bar are alone promoted.

The *independence* of "the Bar of England,"—its freedom from the control and influence of the Bench, and of the Government,—has ever been considered of equal importance with their learning and eloquence, for ensuring the due and fearless discharge of their public duties. Now it raises a grave doubt, whether that independent spirit is not in danger of being impaired, by multiplying the number of small judicial appointments and commissionerships, appropriated to barristers of seven years'

* This objectionable practice of compelling the delivery of a brief to the senior on every occasion (except a motion of course) on pain of losing the retainer, was a few years ago introduced by some of the leaders at the Equity Bar, to the manifest injustice of the juniors, and at the needless expense of the suitor, and often to his injury, for a good junior knows better the practical details of a cause than the senior. The recent rules collected by the Incorporated Law Society restore the former practice on this head.

standing, and bestowed upon those who entertain certain political opinions, or demean themselves agreeably to the powers that be. The majority of the Bar may be far above such influences, but when sixty judgeships are to be given away, or a whole board of commissioners or assistant commissioners to be appointed, we apprehend the public will think, however erroneously, that such good things offer a sore temptation to the integrity of a large section of the long robe, and to which in these times of jostling competition they ought not to be exposed.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

LAW OF LARCENY AMENDMENT.

12 VICT. c. 11.

An Act to amend the Laws in England and Ireland relative to Larceny and other Offences connected therewith.

[3rd April, 1849.]

1. *Punishment of transportation taken away in the case of simple larceny.*—Whereas by the 7 & 8 G. 4, c. 29, it was, among other things, enacted, that every person convicted of simple larceny, or of any felony thereby made punishable like simple larceny, should (except in the cases thereinafter otherwise provided for) be liable, at the discretion of the Court, to be transported beyond the seas for the term of seven years, or to be otherwise punished as by the said act provided: and by 9 G. 4, c. 55, it was, among other things, enacted, that every person convicted of simple larceny, or of any felony thereby made punishable like simple larceny, should (except in the cases thereinafter otherwise provided for) be liable, at the discretion of the Court, to be transported beyond the seas for the term of seven years, or to be otherwise punished as by the same act provided: And it being expedient to abolish the punishment of transportation for the offence of simple larceny, and for felonies by the said acts made punishable like simple larceny: Be it therefore enacted, that from and after the first day of May, 1849, so much of the recited provisions of the said acts respectively as makes any person convicted of simple larceny, or of any felony by such Acts respectively made punishable like simple larceny, (except in the cases thereinafter otherwise provided for,) liable to be transported beyond the seas for the term of seven years, shall be repealed, but every person so convicted shall be liable, at the discretion of the Court, to be otherwise punished as by the said acts respectively is provided.

2. *Tenants and lodgers stealing from houses or apartments let to them, if the value exceed 5l., punishable as before the passing of this act.*—That if any person shall steal any chattel or fixture let to be used by him or her in or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her or her husband, in case the value of the article or articles stolen shall exceed the sum of 5*l.*, every such offender, being convicted thereof, shall be liable to be punished as if this act had not been passed.

3. *Larceny, &c., after two previous summary convictions punishable as before the passing of this act.*—10 & 11 *Vict.* c. 82.—11 & 12 *Vict.* c. 59.—7 & 8 G. 4, c. 30.—9 G. 4, c. 56.—That where any person has been twice convicted of any of the offences punishable upon summary conviction under the provisions contained in the said recited acts, or an act of the eleventh year of her Majesty, intituled "An Act for the more speedy Trial and Punishment of Juvenile Offenders," or an act of the twelfth year of her Majesty, intituled "An Act for the more speedy Trial and Punishment of Juvenile Offenders in Ireland," or an act of the eighth year of King George the Fourth, intituled "An Act for consolidating and amending the Laws in England relative to malicious Injuries to Property," or an act of the ninth year of King George the Fourth, intituled "An Act for consolidating and amending the Laws in Ireland relative to malicious Injuries to Property," (whether each of the convictions has been in respect of any offence of the same description or not, and whether such convictions, or either of them, be before or after the passing of this act,) if the person so twice convicted shall afterwards commit the offence of simple larceny, or any offence by the said firstly and secondly recited acts respectively made punishable like simple larceny, such offender, being convicted thereof, shall be liable to be punished as if this act had not been passed.

4. *In Indictments against Persons twice convicted, it shall be sufficient to state the Fact, and certified copies of convictions to be evidence.* That in any indictment against any person who shall have been twice convicted of offences punishable upon summary conviction as aforesaid, it shall be sufficient to state that such person was at certain times and places so twice convicted as aforesaid, without otherwise describing the offences of which such person was so convicted as aforesaid, and a copy of any such conviction, certified by the proper officer of the Court of General Quarter Sessions to which such conviction shall have been transmitted or returned, or proved to be a true copy, shall be sufficient evidence to prove such conviction, and such conviction shall be presumed to be unappealed against unless the contrary be shown.

EASTER TERM EXAMINATION.

THE Examiners have appointed *Tuesday* the 1st May, at half-past nine, for the Examination of persons applying to be admitted attorneys, at the Hall of the Incorporated Law Society, in Chancery Lane.

The Articles of Clerkship and Assignment, if

any, with Answers to the Questions as to the due Service, according to the Regulations approved by the Judges, must be left with the Secretary, on or before *Monday* the 23rd inst.

Where the Articles have not expired, but will expire during the Term, the Candidate may be examined conditionally, but the Articles must be left within the first seven days of Term, and Answers up to that time.

A paper of Questions will be delivered to each Candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each Candidate is required to answer *all* the Preliminary Questions (No. 1); and it is expected that he should answer in *three* or more of the other heads of inquiry.—*Common Law* and *Equity* being two thereof.

About 160 notices of Examination have been given, but 48 of the Candidates have been already examined. The number at present is therefore 112; but this will be further reduced by the usual casualties.

NOTES OF THE WEEK.

COMMENCEMENT OF EASTER TERM.

The Chancery Sittings will be held at Westminster Hall this Term. The present number contains an unusual portion of the Cause Lists of the several Courts for the ensuing Term. It will be seen that there is a large amount of business to be disposed of, and to which no small addition will doubtless be made by motions arising out of the various Circuits which have just terminated. We trust that arrangements will be made and enforced for the regular and uninterrupted hearing of the several classes of business on the appointed days, and that there will be no cause for complaint of the absence of counsel.

SERVICE OF ARTICLES OF CLERKSHIP.

There is a serious mistake in one of the books of practice, as to the necessity of an articled clerk's *continuous* service of five years. Neither the Act of Parliament nor any decision warrants such a notion. It is possible, indeed, that an interval in the service might be so long that the Court would not sanction it. A man must not spread his five years' service over a quarter of a century, but we have known an interval of three years, duly made up, without any objection from the examiners.

TRANSFER OF RAILWAY AND OTHER SHARES.

The Chief Officer of the new Board of "Inland Revenue," like some other new, though humble instruments, is very active in warning attorneys and solicitors against preparing transfers of shares without stating the full and true consideration. One of the solicitors to whom the caution we published last week has been sent, is highly offended at the circular; but we dare say the new secretary has no intention to annoy the profession, but to prevent on the one hand any loss to the revenue, and on the other the necessity of any prosecution for a breach of the Stamp Laws.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Watson v. *Life.* March 14, 16, 1849.

REFERENCE OF EXCEPTIONS TO ANSWER.—AMENDED BILL.

On exceptions to an answer, where the original bill has been amended, the reference should be of the bill and answer generally, and not of the original bill only.

SEVERAL exceptions were taken to the answer to the original bill in this suit, but the bill was amended before these exceptions were disposed of. The defendant then put in a further answer to the amended bill and the exceptions together. The plaintiff, however, although he admitted the amendments had been answered, insisted that the exceptions still remained unanswered—and, without taking any exception to the further answer as far as related to the amendments—obtained an order from the Master of the Rolls, whereby a reference was directed to the Master to look into the original bill and answer, and the new answer, and see whether the exceptions had been properly answered. The defendant complained that the Master was thereby precluded from looking into the amended bill, although the case disclosed therein might render the exceptions to the original bill immaterial and nugatory. It appeared that the practice at the Rolls had been in accordance with the order made, and the Master of the Rolls therefore refused to alter it, whereupon this appeal was presented.

J. Parker and *Steere* for the appellant; *Temple* and *Gaselee* for the respondent.

The *Lord Chancellor* said, that as the practice did not appear to be uniform in all the offices, he would make inquiries with a view of making one general rule upon the subject. Great inconvenience might be caused from the Master being precluded from looking into the amended bill, as the case made by it might be so different as to render the exceptions to the answer to the original bill immaterial. The practice in the Registrar's Office, it appeared, for the last century had been to refer the bill and answer generally to the Master. This was without doubt the proper order to be made to enable the Master to see whether the exceptions were sufficient. The order of the Court below must, therefore, be varied by striking out the word *original*. No costs, however, could be allowed on either side, as it appeared the practice at the Rolls had been in conformity with the order made.

Rolls Court.

Wynn v. *Fenwick*. March 8, 1849.

MARRIAGE SETTLEMENTS.—SURVIVING CHILDREN.

Under the terms of a settlement, Held, *that the representatives of the children who died in the wife's lifetime, took no interest in the trust fund.*

UPON the marriage of Mr. and Mrs. Fenwick in 1806, a sum of 5,000*l.*, bank annuities, was assigned to trustees upon trust for the wife for life, and at her death, if in the lifetime of the husband leaving issue, then for all and every the child or children of the marriage, in such parts, shares, and proportions as the wife should appoint. Two of the children died in the wife's lifetime, and a question arose, whether they were entitled to any interest in the sum settled.

Spence, Elderton, Purvis, and *Campbell*, for the several parties.

The *Master of the Rolls* held, that the fund was intended for the children only who survived the wife, and that, therefore, the children who had died in her lifetime, took no interest in the bank annuities.

Watts v. *Christie and others*. March 20, 1849.

INJUNCTION.—ACTION BY ASSIGNEES FOR MONEY DUE TO BANKERS.

Injunction refused with costs, to restrain the assignees of bankers from bringing an action on a partnership account; although an assignment had been made from the private, to the partnership, account, of the amount standing to the partner's credit, and notice given thereof to the bankers.

The plaintiffs, Thomas and William Watts, who were wine merchants at Leicester, filed this bill for an injunction to restrain the defendants, who were the assignees in bankruptcy of Messrs. Clarke and Co., bankers, at Leicester, from bringing an action at law against the plaintiffs, under the following circumstances: It appeared that the bankers stopped payment in April, 1843, and that the plaintiffs were debtors to the bank on their partnership account, but that Thomas Watts was a creditor on his private account: The bank not being closed on the 25th May, Thomas Watts assigned the balance due to him on his private account to himself, together with his partner, and gave the bankers notice of the assignment, but no transfer appeared to have been made by the bankers in pursuance thereof. On the 31st May a fiat issued, and the bankers were made bankrupts, and the assignees commenced an action for the recovery of the balance due to the bankers on the partnership account. This bill was, therefore, filed for an injunction.

Turner and *Glasse*, in support of the application, contended that it was the duty of the bankers, on receiving notice of the assignment, to have transferred the balance due to Thomas Watts to the credit of the partnership account, and that the plaintiffs were entitled in equity to a right of set-off.

Roupell and *S. Smith*, contrà.

The *Master of the Rolls* said, that the plaintiffs were not entitled to the relief prayed. The case was hard, but the bill must be dismissed, with costs.

Vice-Chancellor of England.

In re Wainman. Feb. 24, 1849.

RAILWAY LIABILITY.—ARCHITECT'S CHARGES.

The charges of an architect on rebuildings must be paid out of the purchase money, not as additional expenses.

THIS petition was presented, praying that a railway company might be ordered to pay a sum of 118*l.*, which had been charged by an architect for superintending the building of certain shops and buildings belonging to the petitioner which had been taken by the company for their line. It appeared that the purchase-money had been paid in the usual manner, and the buildings nearly rebuilt in pursuance of orders made by the Court under the Lands Clauses Consolidation Act, (8 Vict. c. 18). It was contended that the Court had power, under section 80, "to order the costs of the following matters, including therein *all reasonable charges and expenses incident thereto*, to be paid by the promoters of the undertaking; that is to say, the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the re-investment thereof in the purchase of other lands," &c. And that, therefore, the company ought to pay this sum of 118*l.*

Kenyon Parker in support of the petition; *J. Parker* contrà.

The *Vice-Chancellor* said, that there were no grounds for the present application. By section 69, it was provided that "such monies shall remain so deposited until the same be applied to one or more of the following purposes;" and the third direction was, "if

such money shall be paid in respect of any buildings taken under the authority of this or the special act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct." Although the money could not be re-invested without payment of the charges of an architect, this must be paid out of the purchase-money according to section 69, and the petition must, therefore, be dismissed with costs.

Surtees v. *Hopkinson*. Feb. 22, 1849.

RAILWAY SHARES.—PERSONAL ESTATE.

Railway shares are included in a gift of monies arising from the residue of personal estate.

THE testator gave, devised, and bequeathed to his trustees all his freehold estate, and also all his leasehold estates and the residue of his moneys, chattels, funds, railroad shares, securities for money and other personal estate and effects of what kind soever to which he might be entitled at his death, upon trust to convert into money such parts as did not consist of government securities, stocks, funds, railroad shares, or mortgages on real estates, and invest the same in government or real securities in England or Wales, and from time to time alter and vary the same as they should deem advisable. It was then directed that his wife and her assigns were to receive the same for her life, and after her death upon trust to convey, assign, and assure all his said real and personal estates unto and equally between all and every his children, as tenants in common. In the event of their being no issue, the trustees were to sell and dispose of the real estate, and to stand possessed of the moneys arising from the sale thereof, *and also the moneys arising from the residuary personal estate* and effects, upon trust to lay out the same in government or real securities, with power to vary as aforesaid, upon trust for the benefit of his nephews and nieces, as therein mentioned. The testator died in September, 1835, without issue, and their bill was filed in 1846, for the purpose of having the rights of the parties interested under the will declared. A question arose, whether the railroad shares were included in the gift of the residue to his nephews and nieces.

J. Parker and *Prior* for the plaintiff; *Stuart* and *Bunny* on the same side for other parties; *Bethell* and *Busk*, for the next of kin, cited *Huddleston* v. *Gouldsbury*, 10 Beav. 547; *Malins* for other parties.

The *Vice-Chancellor* said the question was, whether the testator intended to leave all to his nephews and nieces which he had previously given to his wife and children. The power the trustees possessed to vary the securities was general, and extended to the railroad shares. The testator had given them the moneys arising from his residuary personal estate. These words were sufficient of themselves to carry the railway shares.

Vice-Chancellor Knight Bruce.

Davies v. *Thomas*. Feb. 23, 1849.

POWER EXERCISED BY WILL.

Where a donee with power to appoint, gives various sums by his will, amounting to the whole money, but does not refer to the power, the appointment will not take effect.

THE testator by his will gave 1,000*l.* to his wife, for life, and at her decease to such persons as she should by will or deed appoint. In default of appointment the fund was given to the brothers and sisters of the donee. The donee by her will, not referring to the power, bequeathed various sums, amounting in the whole to the sum originally devised, and then gave her wearing apparel to one of her sisters.

Russell and *Biggs* for the plaintiff; *Kenyon*, *Parker*, *Villiers*, and *Osborne*, for the defendants.

The *Vice-Chancellor* held, that the mere coincidence of the amounts was not enough for the Court to infer that the power was intended to be exercised, (*Jones* v. *Tucker*, 2 Mer. 533; *Lovell* v. *Knight*, 3 Sim. 275; *Lempriere* v. *Valpy*, 5 Sim. 108,) although the donee might probably have so intended. The power must, therefore, be declared not to have been exercised, and, consequently, the brothers and sisters were entitled to take, but only those who had survived the donee.

Vice-Chancellor Wigram.

Newman v. *Hutton*. Feb. 17, 19, 20, 21, 1849.

ACCOUNTS BETWEEN OWNERS AND CAPTAIN.

The Court will not open settled accounts, but where it is alleged that the accounting party was of unsound mind, an issue will be granted to try the question.

This suit was instituted to set aside an arrangement which had been entered into between the plaintiff, who was captain of a ship, and had been employed in voyages to the Gold Coast of Africa, and the defendants who were owners, and whereby a sum of 1,250*l.* had been paid, on the ground that the plaintiff was of weak mind at the time of signing the settlement in question, and that the payment had been made while under drunkenness. The original plaintiff, it was alleged, had died by his own hands since the commencement of the proceedings, and the suit was revived by his widow. The plaintiff had made four voyages, and the terms agreed upon were six guineas a month, and one-fourth of the profits arising during each voyage. It was alleged that the plaintiff on his last return was accused of felony by the defendants, and had signed the settlement while under fear of arrest, a sheriff's officer, having attended in the adjoining room, and was only liberated upon payment of the 1,250*l.*

Solicitor-General and *Elderton* for the plaintiff; *Kenyon*, *Parker*, and *Greene* for the defend-

ants, cited *Sergeson* v. *Sealey*, 2 Atk. 411; *Niell* v. *Morley*, 9 Ves. 478.

The *Vice-Chancellor* said, that the bill did not seek to set aside the settlement on the ground of fraud or surprise upon the plaintiff, or of error in the accounts, but merely on the alleged insanity, for the allegation of drunkenness. The only question was, whether an issue should be directed for the purpose of trying the question of insanity. This issue might be taken if the widow were desirous of trying the question.

Queen's Bench.

(Before the Four Judges.)

Boosey v. *Davison*. Jan. 31, 1849.

COPYRIGHT IN THE WORKS OF A FOREIGN AUTHOR NOT PUBLISHED ABROAD.

In an action to recover damages for the infringement of the plaintiff's copyright in certain airs contained in Bellini's opera, *La Sonnambula*, the question intended to be tried was, whether a party could have a copyright in this country of the works of a foreign author published here, which had not been previously published abroad, and the plaintiff had a verdict in accordance with the decision of the Court of Common Pleas in a case of *Cocks* v. *Purday*.

A rule was afterwards obtained to show cause why the verdict should not be set aside on the ground that evidence was improperly rejected, but, upon consideration, the Court was of opinion, that there had been no failure of justice in this respect, and that no evidence had been rejected which was material to the merits of the cause. The rule for a new trial was therefore discharged.

Queen's Bench Practice Court.

Jones v. *Pritchard*. Jan. 31, 1849.

STAYING PROCEEDINGS. — CONSOLIDATION RULE.—PRACTICE.

In this case seven actions were brought for a libel contained in a circular sent by the defendant, who is the manager of the York Theatre, to the Committee of the Shakspeare Fund, reflecting upon the character of the plaintiff. A rule was afterwards obtained calling upon the plaintiff to show cause why the proceedings in six actions should not be stayed until the seventh was tried.

After hearing *Thesiger*, (Sir F.,) against the rule, and *Cockburn* and *Tomlinson* in support of it,

Erle, J., said, he thought the authorities justified him in interfering in this case. It was clear that a multiplicity of actions was a great waste of costs and time, and the plaintiff had not alleged that any purpose was to be obtained beyond imposing the costs of litigation on the defendant. The authorities were in favour of the application, and no doubt they were well founded in reason. The rule must therefore be made absolute.

Common Pleas.

Smith v. *Kenrick*. Feb. 14, 1849.

DAMAGE TO COAL MINES.

An adjoining owner is not liable for damage done by the flowing of water occasioned by air-holes on his own land, made by a former owner. Each owner must secure himself.

The plaintiff and defendant were occupiers of two adjacent collieries, of which the plaintiff's was on a lower level than that of the defendant. It appeared that they were separated by a vertical seam of coal belonging to the plaintiff, and that Evan Jones, a former lessee of the defendant's colliery, had made three thyrlings, or air-holes, through which water came from the defendant's into the plaintiff's colliery, and caused great damage. The plaintiff, therefore, brought an action for compensation for the damages on the ground that the defendant, or the successor of Evan Jones, was bound to work the colliery so as not to interfere with the plaintiff's colliery. A verdict had been entered for the plaintiff, subject to a special case.

The *Court* held, that as no privity of estate existed between Evan Jones and the defendant, the defendant was not bound to protect the plaintiff in regard to the air-holes made by his predecessor. No general liability prevails at law, as claimed by the plaintiff, each party must secure himself against the flow of water into his own colliery. The postea must, therefore, be entered for the defendant.

Court of Exchequer.

Langdon v. *Bisley*. Jan. 31, 1849.

LIABILITY OF RAILWAY DIRECTORS.—PROOF OF FRAUD ON THE PART OF DEFENDANT.

Where the plaintiff, an allottee in an abortive railway scheme, obtained a verdict against a provisional director for the amount of deposits paid by him as allottee, upon the ground that the plaintiff had been induced to sign the subscription deed, and the parliamentary contract, and to pay his deposits, by reason of fraudulent misrepresentations as to the prospects of the company; a rule for a new trial was afterwards obtained, on the ground that there was no evidence to show that the alleged fraud or misrepresentations had been committed by the defendant personally, or with his knowledge or sanction. And that, even though misrepresentations were made by other persons, to whom the conduct of the company's affairs had been confided, as it did not appear that any had been made by the defendant personally, the evidence adduced at the trial was not sufficient to sustain the action.

After argument and taking time to consider, the *Court* came to the conclusion that the evidence at the trial was not sufficient to justify the conclusion that the defendant was personally guilty of fraud.

Rule absolute for a new trial.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

GROUNDS AND PRINCIPLES OF ACTIONS.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75, 439.

Law of Costs, p. 35.

Law of Evidence, p. 56.

Law of Attorneys, p. 341.

Courts of Equity:

Law of Property and Conveyancing, pp. 113, 401.

Principles of Equity, pp. 134, 380.

Practice, pp. 196, 421.

Pleadings, p. 361.

Bankruptcy, p. 158.

Courts of Common Law:

Construction of Statutes, p. 457.]

APPRENTICESHIP.

See *Hiring*.

BANKERS' CHEQUE.

Presentment after date.—To an action by holder against drawer of a cheque, it is no answer that the cheque was not presented in reasonable time, unless, during the delay, the fund has been lost by failure of the banker. *Robinson* v. *Hawksford*, 9 Q. B. 52.

Cases cited in the judgment: Down v. Halling, 4 B. & C. 330; Serle v. Norton, 2 M. & Rob. 401.

BILL OF EXCHANGE.

Alteration.—Acceptance for part.—Stamp.—Foreign bill.—Declaration in assumpsit alleged that plaintiff, in France, drew a bill for a sum named on defendant, which defendant accepted. Issues were joined: 1st, on a plea of non-acceptance: 2ndly, on a traverse of a plea alleging that plaintiff, after the acceptance, and without the defendant's consent, changed the purport of the bill by altering the sum for which it was drawn. On the trial it appeared that the bill had been originally drawn in Paris for a larger sum than that named, but that defendant had accepted for a smaller sum. In the body of the bill the sum originally named had been altered to that for which defendant accepted, but it did not appear by whom, or at what time or place, the alteration had been made. No stamp was on the bill: *Held*, that the plaintiff was entitled to a verdict on both issues: the acceptance by defendant furnishing evidence that he assented to the assertion of the smaller sum, and it not being shown that the alteration, even if made by the parties contrary to their original intention, was made in England, so as to render a stamp requisite. *Hamelin* v. *Bruck*, 9 Q. B. 306.

COMPOSITION OF CREDITORS.

Breach by creditor.—Proof for full amount under bankruptcy.—To an action on a promissory note for 150*l.*, by payee against maker, defendant pleaded that *W.* was indebted to plaintiff in 3,612*l.* 10*s.*, and was unable to pay in full; whereupon it was agreed between plaintiff, defendant, and *W.*, that plaintiff should accept a composition, to cost 1,500*l.*, in satisfaction and discharge of the 3,612*l.* 10*s.*, and, in consideration of the premises, and that plaintiff would accept the 1,500*l.* in satisfaction and discharge, defendant should make the note in part payment, and on account of the 1,500*l.*, and that plaintiff should not enforce, or attempt to enforce, or in any way claim or demand, payment of any further sum than the 1,500*l.*; that defendant made the note upon the terms of the agreement, and that there never was any other consideration; that *W.* afterwards, and before the note was due, became bankrupt; yet plaintiff, without defendant's consent, proved in the bankruptcy for the full amount of the 3,612*l.* 10*s.*

Held, a good plea, on motion for judgment *non obstante veredicto*; but *held*, on motion for a new trial, that the plea was not proved by evidence of an agreement that, on giving 350*l.* down, 150*l.* by note, and a bond of other parties for 1,000*l.*, *W.* should be released from the original debt. *Gillett* v. *Whitmarsh*, 8 Q. B. 966.

CONTRACT.

1. *Consideration.—Compromise of indictment.*—In an action of assumpsit, it appeared that plaintiff had indicted several persons for riot and assault upon a constable in the execution of his duty, and upon others aiding him, and for simple assaults; which offences were alleged to have been committed in impeding the execution of a *fi. fa.* issued by plaintiff against the goods of one of the persons indicted. Defendants, (being third parties,) in consideration that plaintiff would, at their request, not further prosecute, promised to pay the balance in the original action remaining unsatisfied, and likewise the costs of the prosecution. Plaintiff, in consideration thereof, with the assent of the judge before whom the prosecution was, at the assizes, forebore to prosecute further.

On demurrer to pleas which set out the indictment, and which, in answer severally to counts charging the different promises, relied upon the illegality of the contract: *Held*, by the Court of Exchequer Chamber, affirming the judgment of Queen's Bench, that the consideration was unlawful, and no action could be maintained on any of the promises. *Keir* v. *Leeman*, 9 Q. B. 371.

Cases cited in the judgment: Collins v. Blantern, 2 Wils. 341, 347; Johnson v. Ogilby, 3 P.

Wms. 277, 279; Drage v. Ibberson, 2 Esp. N.P.C. 643; Edgcombe v. Rodd, 5 East, 294; Fallowes v. Taylor, 7 T. R. 475; Pool v. Bousfield, 1 Camp. 55; Becley v. Wingfield, 11 East, 46; Baker v. Townsend, 7 Taunt. 422.

2. *Construction of.*—*A.* contracted to buy of *B.* certain cement, in casks and bags, at a given price, for *cash*; *B.* agreeing to allow *A.* 3*s.* 6*d.* for each cask, and 2*s.* 6*d.* for each bag, that should be returned perfect.

In an action by *A.* against *B.* for not accepting and paying for the casks and bags, the declaration averred that *A.* duly paid *B.* for the said cement, and for the casks and bags; and that, although *A.* was ready and willing, and tendered and offered, to return the casks and bags, *B.* refused to accept or pay for them.

B. pleaded that *A.* did not duly pay *B.* for the said cement, casks, and bags; and that *A.* was not ready and willing to return the casks and bags to *B.* within a reasonable time: *Held*, that a payment of the price of the cement by *A.* after an action brought against him, was a payment according to the contract, so as to entitle him to complain of a breach of the contract on the part of *B.*: *Held*, also, that *A.* was not bound to prove that he was ready to return *all* the casks and bags—the allegation being in this respect divisible. *Nelson* v. *Pattrick*, 3 C. B. 772.

COVENANT.

Stamp on mortgage.—By indenture, dated the 17th of November, 1845, reciting that *A.* was indebted to *B.* in 100*l.*, *A.* assigned to *B.* all the goods, fixtures, tools, &c., which then were, or at any time during the continuance of that security should be, in and upon certain premises, to have, receive, and take the said goods, &c., thereby assigned, as *per schedule*, unto *B.*, &c. The deed contained a covenant by *A.* for payment of the 100*l.* on the 8th of February, 1846, with interest thereon from the 8th of August preceding: *Held*, that a mortgage stamp on the deed, applicable to a sum not exceeding 100*l.* was sufficient.

Held, also, that in an action of covenant for non-payment of the money, *B.* was not bound to produce the schedule. *Daines* v. *Heath*, 3 C. B. 938.

COVENANTS RUNNING WITH THE LAND.

Joinder of Covenantees in action against assignee.—*B.* being owner of land for a term of 61 years, granted to *S.* an annuity for lives, and, for securing it, assigned the term, wanting one day, to *R.* By indenture, reciting the above facts, *R.*, at the request of *S.* and *B.*, did demise and lease, and *B.* did grant, demise, lease, ratify, and confirm to *O.* the land for 31 years, (ending some years before the term first mentioned,) at a rent payable to *S.* while the land should remain subject to the annuity, and afterwards to *B.* And *O.*, for herself, her heirs, executors, and administrators, covenanted to and with *S.* and *R.*, and their respective executors, administrators, and assigns, and also to and with *B.*, his executors, administrators, and assigns, that she, *O.*, her executors, administrators, and assigns, would pay the rent to *R.* while the premises should remain subject to the annuity, and afterwards to *B.*; and that she, her executors, administrators, or assigns would perform certain repairs, and would surrender at the end of 31 years to *B.* in good repair; and *B.* (alone) covenanted for quiet enjoyment. There was also a covenant by *O.* with *R.* and *B.* to repair after certain notice: *Held*, that, after the death of *S.*, *B.* and *R.* might join in an action against the assignee of *O.* for breach of the first mentioned covenant to repair, the covenant being with *S.*, *B.*, and *R.* jointly, and running with the land. *Wakefield* v. *Brown*, 9 Q. B. 209.

Cases cited in the judgment: Anderson v. Martindale, 1 East, 497; Sorsbie v. Pack, 12 M. & W. 146; Mills v. Ladbroke, 7 M. & G. 218; Bradburne v. Botfield, 14 M. & W. 559; Hopkinson v. Lee, 6 Q. B. 964; Foley v. Addenbrooke, 4 Q. B. 197; Kitchin v. Buckley, T. Raym. 80.

CREDITOR.

See *Composition*.

CUSTOM OF BANKERS AND MERCHANTS.

Dividend warrants.—Declaration alleged that plaintiff was proprietor of a share in the 3½ reduced annuities, in the management of defendants, (Governor, &c., of the Bank of England,) for certain reward, &c., and was entitled to receive certain dividends, his share standing in the books for the purpose of their paying him, on request, the accruing dividends when sufficient money had been received by them; whereupon defendants became liable, and it was their duty, to pay plaintiff, on request, when sufficient money had been received by them, all dividends due to him; that, while plaintiff was possessed of the share, a dividend became due to him, and sufficient money had been received by defendants, &c., and they were requested by plaintiff to pay him his dividend, and a reasonable time had elapsed, but they had not paid.

Plea, that by usage and custom of bankers and merchants in London, for divers, to wit. 60, years past, the drafts of defendants upon their cashiers, called dividend warrants, are transferable and assignable by delivery only, and a *bonâ fide* holder thereof is entitled to payment by defendants on demand; that *W.* had received from defendants such warrants for payment of the dividend in question, under a power of attorney from plaintiff, authorising *W.* to receive and give receipts for dividend, and had delivered the warrant to *L.* for good consideration then moving from *L.* to *W.*, and that *L.*, while lawful holder of the warrant, had demanded payment from defendants and requested them to hold the money for his use.

Held, by the Court of Q. B., on a replication traversing the above allegations, except the execution of the power and delivery to *W.*;

1. That the allegation of usage was satisfied.

by proof that dividend warrants, with the receipt subscribed, are passed from hand to hand like bank notes, and are paid by the bank cashiers to any one who presents them after a certain day.

2. That the alleged consideration was proved by showing that, before the dividend was due, *L.*, a banker, had discounted a promissory note of and for *W.*, his customer, payable on a day subsequent to the delivery of the warrant by *W.* to *L.*, and that the warrant was delivered to secure payment to *L.* of the note when due; although at the time of delivery the cash balance at *L.*'s bank was in favour of *W.*, and the note was not due till after the day for payment of the warrant. But *held*, by the Court of Exchequer Chamber, that the plaintiff was entitled to judgment on the second; because,

1. The power, as pleaded, did not authorize receiving payment by a warrant; and it did not appear, by the plea or by any statute, that it was a usual mode of paying dividends to a warrant.

2. It did not appear that defendants had become liable to pay *L.*, the warrant not being negotiable by the general law, and the supposed custom not appearing to be an immemorial custom in the particular place, nor an usage of trade of which plaintiff was cognizant.

3. *L.* was not averred to be a *bona fide* holder, but only to have taken for value; and the averment, as above, of his being lawful holder, did not supply the defect. *Partridge* v. *Bank of England*, 9 Q. B. 396.

Cases cited in the judgment: Glynn v. Baker, 13 East, 509; Stewart v. Aberdein, 4 M. & W. 211; Bartlett v. Pentland, 10 B. & C. 760.

DECEIT.

When action lies.—Declaration in case stated that plaintiff was a printer of silk goods, and had delivered to defendant a lot of such goods, in which were woven fabrics of silk, printed by plaintiff, with a design for the ornamenting of them, which had been published by plaintiff to defendant and others, and plaintiff was about to print other fabrics of silk with the same design, and to publish the same in the way of his trade for gain; of all which defendant had notice; but defendant contrived to deceive, injure, and defraud plaintiff, and induce him to desist from printing more with the design, and to deprive him of the gains he would have made, *and to cheat him of the benefit of the design, and to acquire the same for the sole benefit of defendant*, and to put plaintiff to expense, falsely, fraudulently, and deceitfully represented to plaintiff, that in the lot there was a copy of a registered pattern, (see statutes 5 & 6 Vict. c. 100; 6 & 7 Vict. c. 65,) and that, the parties having asked defendant for the printer, defendant was obliged to give plaintiff's name; and the parties intended to proceed against plaintiff by injunction and order through the Court of Chancery, (thereby meaning that the design was a copy of a design which had been registered, and the copyright in which was subsisting, according to the *statutes* respecting copyright of designs, and that the parties interested in the design had asked defendant who was the printer, and defendant had been obliged to give plaintiff's name as printer, and the parties intended to proceed against plaintiff, to prevent him from purchasing the design, by injunction and order, through the Court of Chancery); whereas, in truth, no such design, or design resembling it had been registered, according to the *statute* aforesaid, and there were no parties interested in the design; nor did any parties intend to proceed against plaintiff, by injunction, &c.; as defendant, at the time of making the representation, knew: by means of which representation plaintiff, believing it to be true, was induced to travel a long distance, for the purpose of inquiring into the matters represented, and satisfying the supposed parties, as it was reasonable for him to do under the circumstances; and was induced to abstain from further printing with the design, which he had orders to do, and from selling silk handkerchiefs printed with the design; and defendant, by means of the premises, enjoyed the benefit of the design to the exclusion of plaintiff, and printed with the design, and sold for his profit, silk handkerchiefs, and took the profits, without the competition of the plaintiff, and to his exclusion. On general demurrer:

Held, that the declaration showed a cause of action, it appearing that defendant had knowingly uttered a falsehood with the design to deprive plaintiff of a benefit and acquire it to himself, and the damage naturally flowing from plaintiff's belief.

And that the innuendo was unnecessary, and could not therefore be the ground of an objection to the declaration. The following objections were also disallowed: That the very words of the representation were not set out; that the declaration with the innuendo, did not show a representation by defendant, that the copyright of the supposed parties still existed; that the truth of the representation was not properly negatived, the averment in that respect meaning *statutes* in the plural, instead of being confined to statute 5 & 6 Vict. c. 100. *Barley* v. *Walford*, 9 Q. B. 197.

DEVISE, CONSTRUCTION OF.

"*Male heirs.*"—Although the general rule is, that, to take by purchase under a devise to the male heirs of *W.*, the taker must be both a male and very heir, yet such rule may be controlled when the rest of the devise shows that the devisor intends to give the preference to a male descendant of *W.*, tracing his descent entirely through males, over a descendant, male or female, who should be heir general of *W.*, but not to trace a descendant entirely through males; and the descent, so apparently preferred, will take to the exclusion of the heirs general of *W.*, and of the devisor.

As where, to the words "male heirs of *W.*," was added, "if any such there be," and the rest of the devise showed that the devisor knew that the heir general of *W.*, who traced through a female, was a male, and yet a remainder was limited over to him upon failure of male heirs of *W.*; and the devisor added, that the males were to take place first, as long as there were any, through every descent; and also added, to the words of purchase, "male heirs of *W.*, if any such there be," the words of limitation "and their male heirs for ever." *Doe d. Angell* v. *Angell*, 9 Q. B. 328.

Cases cited in the judgment: Wills v. Palmer, 5 Burr. 2615; Weston v. Burtenshaw, Fearne's Cont. Rem. 570, App. No. 1; Newcomen v. Bethlem Hospital, Amb. 8; Baker v. Wall, 1 Lord Raym, 185; Lord Ossulston's case, 3 Salk. 336; Doe d. E. of Lindsey v. Colyear, 11 East, 548; Oddie v. Woodford, 3 Myl. & C. 584.

EXECUTOR DE SON TORT.

A party who knowingly receives a chattel from an executor *de son tort*, and deals with it as his own, does not himself become thereby executor *de son tort*. So *held*, where the widow of an intestate possessed herself of a lease, part of the estate, without taking out administration, and handed it to another party, who kept it, and occupied the premises for the residue of the term with the landlord's assent. *Paull* v. *Simpson*, 9 Q. B. 365.

FISHERY.

How described.—A declaration reciting that defendant had been summoned to answer plaintiff in an action of trespass, charged that defendant with force and arms, broke and entered a fishery, to wit, the sole and exclusive fishery of the plaintiff, in a certain part of a river then flowing and being over the soil of one *F.*, and there fished for fish in the said fishery of plaintiff, and the fish of the said fishery of plaintiff, there found, and being in the said fishery, chased and disturbed: Conclusion, contrà pacem.

Held, on motion in arrest of judgment, after verdict for plaintiff:

1. That the declaration was shaped in trespass.

2. That (*semble*) trespass lies for breaking and entering the several fishery of *A.*, on the soil of *B.* But,

3. That the words "sole and exclusive fishery" were not equivalent to "several" fishery; and that no cause for an action of trespass appeared. *Holford* v. *Bailey*, 8 Q. B. 1000.

HIRING.

Defective contract of apprenticeship.—By written agreement between *W.* and *B.*, (*B.* not appearing to be connected with any other party to the agreement, except by its terms,) of the one part, and *O.* of the other part, *W.* agreed to hire, and *O.* to be hired, for three years, to dress silk. For the first three months from the commencement of *O.'s* working under the agreement, he was to receive 10*s.* per week; after that time, to dress silk on a frame at 2½*d.* per pound for foreign waste, and 3*d.* per pound for home waste, provided he dressed 72 pounds of foreign waste for double yarn, and 60 pounds of home waste for single yarn, per week. For all he did, over and above the said weights of waste, he should receive for foreign waste 4*d.* per pound, and for home waste 4½*d.* per pound; and for what his work averaged short of the above-mentioned weights, of 72 pounds and 60 pounds per week, he should be subjected to be deducted or abated 4½*d.* and 4*d.* per pound for each description of dressed waste deficient of the aforesaid weekly quantity. And *B.* should receive of *W.* 6*s.* per week, for superintending and instructing *O.*, in the best manner he was capable, to make him a competent workman; *B.* to be answerable for the work being done in a proper manner. *B.* was to receive 4*d.* per pound for foreign waste, and 4½*d.* per pound for home waste, for his own work, during the time of the agreement."

Held, 1. That this was a contract for the hiring of *O.*, and not an imperfect contract of apprenticeship.

2. That it was not an exceptive hiring. *Reg.* v. *Northowram, Inhabitants of*, 9 Q. B. 24.

Case cited in the judgment; Rex v. Billingbay, 5 A. & E. 676.

JOINT STOCK BANKING COMPANY.

1. *Liabilities of directors and committee men.*—In 1837, several parties associated together, to form a joint stock company, engaged offices, clerks, &c., and circulated prospectuses containing the defendant's name as a director. The defendant attended meetings and received summonses from Oct. 1837, to March, 1838, but ceased to attend the one and receive the other, after that time, though the company continued to meet till March, 1839. On the 31st of July, 1838, an act passed forming and regulating the company, in which the defendant and several other parties, and all other persons who should take shares, were united into a company. In a deed prepared from instructions given in Nov. 1837, the defendant's name was set forth as a director, and a seal placed on the deed for his signature, but he never executed the deed.

On the 6th November, 1843, judgment in an action commenced on the 15th April 1540, was signed against the secretary of the company, upon which judgment a *sci. fa. quare executionem non* issued against the defendant.

Held, on a special case under which the Court were at liberty to draw such inferences as a jury ought to have drawn, that the foregoing facts did not sufficiently show that the defendant was a member of the company at the time when the judgment was obtained. *Scott* v. *Berkeley*, 3 C. B. 925.

2. *Liabilities of directors and committee-men.*—One who merely assents to his name being published in a list of a provisional committee of a projected railway company does not thereby implicitly authorize the secretary, or any

one else, to pledge his credit for goods supplied to, or work done for, the company. *Barker* v. *Stead*, 3 C. B. 946.

LANDLORD AND TENANT.

Remedies.—Re-entry.—A lease contained the following clause: "And also shall be lawful for *E. D.*" (the lessor,) "her executors," &c., "to call on testator for quarterly payments of rent, or, if otherwise, as now accepted, at Michaelmas and Lady Day, as a matter of favour, with a quarter remaining in hand, and, if not paid in 20 days after, rent as stated, and 10*l.* of increased rent for breaking up land by acre, then the tenant shall be liable to have the rent, &c. due, recovered by sale and distress, or to enter on the premises for the same till it be fully satisfied:

Held, 1. That the clause might be understood as reserving a right of entry, upon non-payment of rent, to hold the premises till the arrears were paid.

2. That, under this clause, the lessor could not enter without the common law formalities, section 2 of statute 4 Geo. 2, c. 28, applying only where there is a right of re-entry by which the lease is avoided. *Doe d. Darke* v. *Bowditch*, 8 Q. B. 973.

See *Sheriff's Duty*.

LOTTERY.

Illegality.—Derby.—Before the running of a horse-race, several persons, by agreement, subscribed into the hands of a secretary, and deposited with a treasurer 15*s.* each; the names of the subscribers were then written respectively on cards; and the names of the horses intended to run were written in like manner on other cards; each set of cards was then placed in a box, and the cards drawn out alternately as chance directed; each subscriber was considered as holding that name of a horse which came out next before the drawing of his own name; and the holders became entitled to prizes varying from 24*l.* downwards, as the horses whose names they held came in first, second, &c., in the race.

Held, in a case arising before stat. 8 & 9 Vict. c. 109, an illegal game. And *quære*, whether it would have been affected by section 18 of that act? *Gatty* v. *Field*, 9 Q. B. 431.

Case cited in the judgment: Allport v. Nutt, 1 C. B. 974.

MISCHIEVOUS ANIMAL.

Injury done.—A person who keeps an animal accustomed to attack and bite mankind, with knowledge that it is so accustomed, is *primâ facie* liable in an action on the case at the suit of any person attacked and injured by such animal, without any averment in the declaration of negligence or default in the securing or taking care of it. The gist of the action is the keeping of the animal after knowledge of its mischievous propensities.

Quære, whether, to an action on the case for injury caused as above stated, it would be a defence that the injury was occasioned solely by the wilfulness of the plaintiff, after warning. *May* v. *Burdett*, 9 Q. B. 101.

Cases cited in the judgment: Thomas v. Morgan, 2 C. M. & R. 496; 5 Tyr. 1085; Smith v. Pelah, 2 Stra. 1264.

PARTNERSHIP.

1. *What constitutes a partnership.*—*A.*, the proprietor of a newspaper, agreed to sell all the plant of the office to *B.* for 1,500*l.*, to be paid, with interest, by instalments running over a period of seven years; *A.* undertaking to guarantee to *B.* during the seven years, the clear yearly profit of 150*l.* over and above the annual payments of principal and interest: and *B.*, in consideration of such guarantee, agreed *to pay all such surplus profits to* A., *until such surplus profits should amount to* 500*l.*, if they should amount to that sum during the seven years; and that if such surplus profits should during the seven years amount to 500*l.*, then *B.* should pay,—over and above the purchase money and interest, and the 500*l.*—the existing liabilities of the newspaper, not exceeding 250*l.*: *Held*, that *A.* was liable, as a (*quasi*) partner, for the price of goods supplied to *B.*'s order for the use of the newspaper. *Barry* v. *Nesham*, 3 C. B. 641.

2. *Authority of partner.*—One partner has no implied authority to consent to an order for judgment in an action against himself and his co-partner. *Hambridge* v. *De la Crouée*, 3 C. B. 742.

3. *Authority of partner.* — In an action against *A. B.* and *C. D.*, upon a promissory note signed by *A. B.* in the names of himself and *C. D.*, it appeared that the business, in respect of which the note was given, had formerly been carried on by *C. D.*, and that *C. D.* had admitted that she was a partner: *Held*, that a circular issued by *A. B.*, stating that "the business would in future be carried on in the name of *B.* and *D.*," was admissible in evidence, though not distinctly brought home to *C. D.*: *Held* also, that a signature of the note by the names and surnames of the respective parties, was a sufficient signature to charge the partnership. *Quære*, whether in the absence of a special authority, one partner can bind another by a signature other than that of the usual style of the firm. *Norton* v. *Seymour*, 3 C. B. 792.

PATENT.

Title.—When sufficiently specific.—*Held*, by the Court of Queen's Bench, that the title of a patent must (though not as minutely as the specification) describe the nature of the invention; and that the patent is void if the title is so generally worded as to be capable of comprising, not only the particular invention, but improvements not contemplated in it. As where the patent was taken out "for improvements in carriages," and the invention was, in fact, an improvement in German shutters, which were used only in some kinds of carriages.

Held, by the Court of Exchequer Chamber, reversing the above judgment, that where the title is not inconsistent with the specification,

and no fraud is practised on the Crown or the subject, it is not a fatal objection that the title is so general as to be capable of comprising a different invention from that for which the patent is claimed; that the title "for improvements in carriages" might be taken to mean improvements in some kinds of carriages, and did not necessarily imply any untrue assertion, though, in fact, the improvements were not applicable to all carriages; and that the patent was valid. *Cook* v. *Pearce*, 8 Q. B. 1044.

Cases cited in the Q. B. judgment: Bovill v. Moore, 2 Marsh, 211; Rex v. Else, Bull, N. P. 76; 11 East, 109, *n.*; Harmer v. Playne, 11 East, 101, 109, *n.*; Hill v. Thompson, 3 Meriv. 622, 629; Jessop's case, 2 H. Bl. 476, 489; Boulton v. Bull, 2 H. Bl. 463, 489.

Case cited in the Exchequer chamber judgment: Neilson v. Harford, 8 M. & W. 806, 826.

SHERIFF'S DUTY.

8 *Anne, c.* 14, *s.* 1.—*Notice that years' rent due.*—Declaration in case, by execution creditor against sheriff, stated that plaintiff sued out a *fi. fa.* against *S.*, and delivered it to defendant to be executed; that within defendant's bailiwick were goods of *S.* sufficient to satisfy five writs of *fi. fa.* after mentioned, and the rent after-mentioned, and also other goods of *S.*, whereof defendant might have levied the moneys directed to be levied by plaintiff's *fi. fa.*; of which defendant had notice, and took in execution goods of *S.* of value sufficient to satisfy the five other writs, the rent, and plaintiff's writ, but did not, in reasonable time, levy the moneys under plaintiff's writ: but falsely returned, that before the delivery of plaintiff's writ, five other writs of *fi. fa.* were delivered to defendant, by virtue whereof he took in execution goods of *S.*, which remained in his hands for want of buyers; and that, after the seizure, he had notice that a year's rent was due to the landlord of the premises where the goods were seized, of which plaintiff and the five other execution creditors had notice, but none of them had paid the rent; and that *S.* had no other goods whereof defendant could cause to be made the debt, &c., in plaintiff's writ.

Plea: that there was not, at the time of the delivery of plaintiff's writ, and while it remained in force, any goods of *S.*, besides the goods sufficient to satisfy the five other writs and the rent, in defendant's bailiwick, whereof defendant had notice, or could, or might, or ought to have levied the moneys directed to be levied by plaintiff's writ, in manner and form, &c.

Held, that defendant supported his plea by proof that the rent was due, that he had notice thereof, that plaintiff and the other execution creditors had also notice thereof, and that none of them had paid the rent: stat. 8 Anne, c. 14, *s.* 1, prohibiting such a taking and removal of the goods as will amount to a levy, until the rent is paid. *Cocker* v. *Musgrove*, 9 Q. B. 223.

Cases cited in the judgment: Wintle v. Freeman, 11 A. & E. 539; Riseley v. Ryle, 11 M. & W. 16.

SLANDER OF TITLE.

In case against surveyor of highways, applied under the 7 & 8 Vict. c. 84, for words spoken by him with reference to certain unfinished houses put up for sale by public auction,—malice is not to be inferred from the evidence of the defendant having acted upon an incorrect view of his duty, founded upon an erroneous construction of the statute. *Pater* v. *Baker*, 3 C. B. 831.

STAMP.

See *Bill of Exchange; Covenant.*

TRESPASS.

1. For breaking and entering—aggravation. *A.* hired of *B.* certain rooms in the house of *B.*, at a yearly rent, with the privilege of putting a brass-plate with *A.*'s name engraved thereon, upon the front door, there to remain as long as *A.* should continue to occupy the apartments. The rent being in arrear, *B.* removed the brass-plate from the door and refused to allow the plaintiff to have access to the apartments. In trespass, charging, that *B.* broke and entered the apartments of *A.*, and expelled him therefrom, and removed the plate, and seized and converted his goods. *B.*, amongst other pleas, pleaded that *A.* was not possessed of the door-plate:

Held, that the facts warranted the jury in finding that *B.* was guilty of *breaking and entering* the apartments; that the removal of the plate was properly treated as a substantive trespass, having been pleaded to as such; and that, in the absence of evidence to show that it was affixed to the freehold, it must be assumed to be a chattel only. *Lane* v. *Dixon*, 3 C. B. 776.

2. *For false imprisonment.*—In trespass by *A.* and *B.*, his wife, against *C.* for a false imprisonment of *B.*, *C.* justified under an execution against the plaintiffs for costs in a former action brought by them against *C.*; alleging the recovery of the judgment, and issuing of the *ca. sa.*, its delivery to the sheriff, and the arrest of *B.* thereunder. The plaintiff replied—confessing the recovery of the judgment, and the issuing of the *ca. sa.*—*de injuriâ sud propriâ, absque residuo causæ*:—*Held*, that, as the judgment and writ were admitted on the record,—upon the warrant, and the arrest of *B.* under it, being proved by the plaintiff, the justification was made out, without evidence on the part of the defendant. *Newton* v. *Boodle*, 3 C. B. 795.

VENDOR AND PURCHASER.

A. paid a deposit upon a contract for the purchase of the lease, &c., of a public house. It being afterwards discovered that the house was comprised with another in an original lease, under which the lessor had a right to re-enter for breach of covenants, in respect of either house: *Held*, that *A.* was not bound to accept the title with an indemnity, but might recover back the deposit, with the expenses incurred in investigating the title. *Blake* v. *Phinn*, 3 C. B. 976.

BUSINESS OF THE COURTS.

COMMON LAW CAUSE LISTS.

Queen's Bench.

NEW TRIALS

Remaining undetermined at the end of the Sittings after Hilary Term, 1849.

Easter Term, 1848.

Kent.—Doe d. Warren and another *v.* Brydges.—Sir F. Thesiger.

Sussex.—Forth *v.* Simpson—Serjeant Shee.

Denbigh.—Doe d. Clay and others *v.* Jones and others—Townsend.

Leicester.—Baily and another *v.* Macaulay—Whitehurst.

(To come on for argument with Baily and another *v.* Haines, Michaelmas Term, 1848.)

Warwick.—Same *v.* Pearson—Same.

Liverpool.—Hassall and another *v.* Cole—Knowles.

Michaelmas Term, 1848.

Middlesex.—Gardner *v* Slade and wife—Crowder.

Middlesex.—Hulse and others *v.* Esdaile and others—Sir F. Thesiger.

London.—Baum and others *v.* Ricketts and others—Martin.

London.—Baily and another *v.* Haines—Humfrey.

London.—Same *v.* Macaulay—Easter Term, 1848.

London.—Same *v.* Pearson—Easter Term, 1848.

London.—Same *v.* Bracebridge—Hilary Term, 1849.

(To come on for argument with this Rule.)

London—Small *v.* Nairn—Sir F. Thesiger.

Essex.—Sturges and another *v.* Cooper and another—Serjeant Shee.

Essex.—Doe d. Carter *v.* Barnard—Chambers.

Devon.—Doe d. Moore and another *v.* Dunning and another—Butt.

Cornwall.—Doe d. Rowe *v.* Howell—Crowder.

Bristol.—Scott *v.* Ferris—Serjeant C. C. Jones.

Cardigan.—The Queen *v.* John Bowen—W. H. Watson.

York.—The Queen *v.* Inhabitants of Brightside Bierlowe—Hall

York.—The Queen *v.* Inhabitants of Attercliffe cum Darnall—Same.

York.—The Queen *v.* Inhabitants of Tinsley—Same.

Durham.—Jenkyns *v.* Hutchinson—Martin.

Lancaster.—Robinson *v.* Waddington and another—Pashley.

Liverpool.—Walley *v.* Stone and others—Martin, for defendant, M'Connell.

Liverpool.—Company of Proprietors of Rochdale Canal *v.* King and others—Martin.

Liverpool.—James and others *v.* Lynn, clerk—Knowles.

Liverpool.—Jenkyns *v.* Brown and others—W. H. Watson.

Cambridge.—Hammond *v.* Beadythe—Same.

Cambridge.—Fuller *v.* Brown and another—Serjeant Byles.

Cambridge.—Preston *v.* Titchmarsh—O'Mally.

Suffolk.—Doe d. Marriott, clk., *v.* Marquis of Hertford—Andrews.

Suffolk.—Rudland *v.* Mills and another—Serjeant Byles.

Oxford.—Allen *v.* Gilkes and another—Whateley.

Oxford.—Same *v.* Same—Serjeant Talfourd.

Worcester.—Doe d. Mence *v.* Hadley—Whateley.

Stafford.—Bate *v.* Pane—Keating.

Tried during Michaelmas Term, 1848.

Middlesex.—Gridley *v.* Austin—Crowder.

Hilary Term, 1849.

Middlesex.—Hankinson and another, executors, &c., *v.* Alcock—Humfrey.

Middlesex.—Gadsby *v.* Estall—Sir F. Thesiger.

Middlesex.—Morrell and another *v.* Wotton, survivor, &c.—Humfrey.

Middlesex.—Daubney *v.* Phipps—Same.

Middlesex.—The Queen *v.* Smith and others—Sir F. Thesiger.

Middlesex.—Same *v.* Same—Cockburn.

Middlesex.—Neeves *v.* Burrage—Knowles.

Middlesex.—Ostermen *v.* Bateman—Gurney.

London.—Dawson and others *v.* Hay—Temple.

London.—Job *v.* Hudson, gent., one, &c.—Humfrey.

London.—Baily and another *v.* Bracebridge—Same.

London.—Wilson *v.* Holden—Sir F. Thesiger.

Tried during Hilary Term, 1849.

Middlesex.—Arden *v.* Sullivan—Petersdorff.

Middlesex.—Doe d. Howe *v.* Thornton—Cox.

ENLARGED RULES.

For Easter Term, 1849.

First Day.

In the matter of Thompson, Esq., and the Cockermouth and Workington Extension Railway Co., to be heard in Bail Court.

In the matter of William Watson and others, to be heard in Bail Court.

Exparte Wilkinson, administrator, &c., In re Edward Smith, Gent., one, &c., full Court.

In the matter of Robert Brettell Bate, to be heard in Bail Court.

Allen and others, executrix, *v.* Goodchild, full Court.

Taylor *v.* Mould, to be heard in Bail Court.

Freeman, a pauper, *v.* Rosher, full Court.

Stanbank *v.* Ethelstone, to be heard in Bail Court.

The Queen *v.* The London and North Western Railway Company, full Court.

Same *v.* Surveyors of Highways of Woodditton, full Court.

Second Day.

In the matter of S. G. Hernidge, Gent., one, &c., to be heard in Bail Court.

Wyld *v.* Coleby, to be heard in Bail Court.

In the matter of Clay, to be heard in Bail Court.

In the matter of Beadon and another, to be heard in Bail Court.

In re Fosbrooke and Leech, in County Court of Lancashire, full Court.

Doe dem. Harrison and another *v.* Louch, to be heard in Bail Court.

The Queen *v.* Recorder of Bolton, to be heard in Bail Court.

Same *v.* Commissioners of Sewers, Norfolk, to be heard in Bail Court.

Same *v.* Justices of Surrey, to be heard in Bail Court.

5th Day.

The Queen *v.* The Inhabitants of Angmering, to be heard in Bail Court.

The Queen *v.* The London and North Western Railway Company, full Court.

Same *v.* Same, full Court.

SPECIAL CASES AND DEMURRERS.

Easter Term, 1849.

Whitmore and Co.—Morris, Bt., v. Dk. of Beaufort, dem.

Tilson and Co. — Green and others v. St. Katherine Dock Company, special case.

Johnson.—Everest and others v. Humphery, dem.

Smedley & Co. — Ryan v. Clark and another, dem.

Wiglesworth and Co. — Ayrton and another v. Abbott, clk., and another, special case.

Wade and P.—Doe d. Payne v. Plyer, special case.

Maples & Co.—Elliot and others v. Von Glehn, dem.

Mounsey & G.—Doe dem. Dand v. Thompson, special case.

Lyddon.—Wilson, Bt. v. South Eastern Railway Company, dem.

Newton.—Newton v. Bishop, dem.

Warter.—Sherlock v. Spiers, special case.

M'Leod.—Smith and another v. Alexander and another, dem.

Mortimer.—Duke of Rutland v. Bagshaw and another, N. O. V.

Maples and Co.—Small and others v. Gibson, N. O. V.

Sanger.—Howley, W., extrix., &c. v. Knight, sued with another, dem.

Chilton and Co.—Sturge and another v. Jenkins, special case.

Ivimey.—Dowling v. Becke, dem.

Crafter.—Milner v. Janes, dem.

Cree and Son.—Wilson v. Eden, Bt., special case.

Gatty and T.—Doe dem. of Her Majesty v. Archbishop of York, special case.

Marson and D.—Marson and another v. Lund, dem.

Wyche.—Flockton and others v. Hall and others dem.

Beddome and W.—Dowdall v. Hallett and others, dem. to plaintiff's declaration.

Beddome and W.—Same v. Same. dem. to defendant Clarke's pleas.

Beddome and W.—Same v. Same, dem. to defendant Allan's pleas.

Beddome and W.—Same v. Same, dem. to defendant Hatfield's pleas.

Kinder.—Ryan v. Giles, dem.

Rushworths.—Smith v. Bennett, dem.

Vickery.—Ricketts v. Loftus, dem.

Palmer & Co.—Evelyn v. Worsfold, special case.

Beddome and W.—Steele v. Hoe, special case.

Lepard and Co.—Russell and another v. Barnard, dem.

Beddome and Co.—Dewar and another v. Hallett, sued with others, dem.

Beddome and Co.—Same v. Whittam, sued with others, dem.

Beddome and Co.—Same v. Hatfield, sued with others, dem.

Wilson.—Pye v. Plant and others, dem.

Sanger.—Palmer, executors, &c. v. Welch, dem.

Fry and Co.—Cannon v. Wetherill, dem.

Johnson and Co.—Woolley and another v. Vernon, dem.

Philp.—Rossetti v. Watling, dem.

Eden—Hudson v. Elkins, dem.

Maples and Co.—Huntley and others v. Pinto and another, special case.

Ravenscroft.—Houlden v. Smith, Esq., special case.

Whitaker.—Bunter and another v. Cresswell, clerk special case.

Dickson and O.—Whitmore and others, assignees, v. Hale and another, dem.

Lallen.—Armitage v. Insole and another, dem.

Lane and P.—Sharp v. Fuller, dem.

Oliverson and Co.—Thompson, Esq., M. P., v. Ingham, Esq., and another, dem.

Wheelock.—Wm. Robins v. Bate, executrix, dem.

Patten.—Meyrick and another, executors, &c. v. Anderson, executrix, dem.

Wheelock.—Wm. Robins v. Bate, surviving executor, dem.

Nixon.—Ghislin v. Deen, dem.

Sadlow and Co.—Sayles v. Blane, dem.

Holcombe.—Tull v. Tull, dem.

Exchequer of Pleas.

PEREMPTORY PAPER.

For Easter Term, 1849.

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

Rule Nisi.

27th Jan. 1849.—Smith v. Stewart, sued, &c.—Mr. Pigott and Mr. Petersdorff.

SPECIAL CASES.

For Easter Term, 1849.

Remanets from Hilary Term, 1849.

For Judgment.

Wood and others v. Waud and others.
(Heard 1st Dec. 1848.)

Harcourt and wife v. Wyman, proms.

Same v. Same, debt

Same v. Same, covt.

Doe d. Harcourt and ors. v. Wyman
(Heard 26th Jan. 1849.)

For Argument.

In the matter of William Willis, a bankrupt, by order of V. C. Knight Bruce.

Doe dem. Earl of Yarmouth v. Newmarch and others, by order of Baron Parke.

Hollingworth v. Palmer, by order of *Nisi Prius.*

Lowther v. Benton, by order of Baron Alderson.

Rigby and another v. The Great Western Rail. Co., by order of Lord Chancellor.

Bird and another, assignees, &c. v. Brown and others, by order of *Nisi Prius.*

Doe d. Clift and another v. Birkhead, by order of Baron Alderson.

Spooner v. Payne, by order of Vice-Chancellor Knight Bruce.

Murray and another v. Murray and another, by order of Baron Platt.

Ker and others v. Pickering, by order of Baron Platt.

DEMURRERS.

For Easter Term, 1849.

Remanets from Hilary Term, 1849.

For Judgment.

Jones v. Morris and another, (Replevin 1st action.)
(Heard 31st May, 1848.)

Chauntler v. Robinson, clk.
(Heard 26th Jan. 1849.)

Ness v. Bertram and another.
(Heard 29th Jan. 1849.)

The Leeds and Thirsk Railway Company *v.* Fray.

(Heard 20th Feb. 1849.)

For Argument.

Southby *v.* Bridgman.
(Stayed by injunction.)
Sibthorp *v.* Brunel.
Dixon and others *v.* Dixon and another.

NEW TRIAL PAPER.

For Easter Term 1849.

FOR JUDGMENT.

Moved Michaelmas Term, 1848.

Stafford, Mr. Baron Rolfe.—Sharrod *v.* London and North Western Railway Company.—Mr. Godson.

(Heard 8th Feb. 1849.)

York, Mr. Justice Cresswell.—Reedie, administratrix &c. *v.* London and North Western Railway Co.—Mr. Knowles.

(Heard 13th and 14th Feb. 1849.)

York, Mr. Justice Cresswell.—Hobbitt, admix. *v.* Same—Same.

(Heard 14th Feb. 1849.)

FOR ARGUMENT.

Moved Easter Term, 1848.

Middlesex. Mr. Baron Alderson.—Arnold *v.* Ryan—Mr. Serjt. Wilkins.

Middlesex, Mr. Baron Alderson.—Glen *v.* Dungey and another—Mr. Pearson.

Moved Trinity Term, 1848.

Middlesex, Lord Chief Baron.—Gayland *v.* Morris and another—Mr. Watson for deft. Robert Morris.

Middlesex, Lord Chief Baron.—Greville *v.* De Rutzen—Mr. Humfrey.

London, Lord Chief Baron.—Campbell *v.* Pepper—Mr. Lush.

Moved Michaelmas Term, 1848.

Middlesex, Lord Chief Baron.—Boosey *v.* Purday—Mr. Attorney-General.

Middlesex, Lord Chief Baron.—Same *v.* Same—Mr. Bovill.

Middlesex, Lord Chief Baron.—Macgregor *v.* Keily—Mr. Crowder.

Middlesex, Lord Chief Baron.—Clayton *v.* Clayton and others—Mr. Cockburn.

Middlesex, Lord Chief Baron.—Faithfull *v.* Proctor—Mr. Humfrey.

Middlesex, Lord Chief Baron.—Brown *v.* Scace—Mr. Chambers.

Middlesex, Lord Chief Baron.—Edwards *v.* Scace. Mr. Chambers.

Middlesex, Lord Chief Baron.—Green *v.* Hill—Mr. Petersdorff.

Middlesex, Lord Chief Baron.—Treberne *v.* Biers—Mr. Lush.

London, Lord Chief Baron.—Miller and another *v.* Atlee—Mr. Martin.

London, Lord Chief Baron.—Mackintosh and another *v.* Mitcheson—Mr. Martin.

London, Lord Chief Baron.—Gomme *v.* Braithwaite—Mr. Chambers.

Bristol, Mr. Justice Coleridge.—Gullick *v.* Hamley—Mr. Skinner.

Bristol, Mr. Justice Coleridge.—Cross *v.* Dando and others—Mr. Edwards.

York, Mr. Justice Cresswell.—Brooke and another *v.* Faviell, jun.—Mr. Martin.

York, Mr. Justice Cresswell.—Graburn *v.* Harberry—Mr. Manisty.

York, Mr. Justice Cresswell.—Graburn (on affidavit) *v.* Everett—Mr. Manisty.

Newcastle, Mr. Justice Cresswell.—Ness *v.* Angas—Mr. Knowles.

Newcastle, Mr. Justice Cresswell—Same *v.* Gouthwaite—Mr. Martin.

Newcastle, Mr. Justice Cresswell.—Same *v.* Armstrong—Mr. Watson.

Newcastle, Mr. Justice Cresswell.—Same *v.* Richardson—Same.

(Proceedings stayed pursuant to order of Mr. Baron Rolfe.)

Newcastle, Mr. Justice Cresswell.—Same *v.* Glaholm—Mr. Watson.

(Proceedings stayed pursuant to order of Mr. Baron Rolfe.)

Newcastle, Mr. Justice Cresswell.—The Master Pilots and Seamen of Newcastle-on-Tyne *v.* Hammond—Mr. Martin.

Carlisle, Mr. Justice Erle—Aglionby *v.* Williams and others—Mr. Martin.

Lancaster, Mr. Justice Erle.—Williamson *v.* Heap—Mr. Baines.

Liverpool, Mr. Justice Erle.—Clarke, on affidavits, *v.* Holford—Mr. Attorney-General.

Liverpool, Mr. Justice Erle.—Turner *v.* Deane—Mr. Baines.

Liverpool, Mr. Justice Erle.—Cope *v.* The Thames Haven Dock and Railway Company—Mr. Martin.

Liverpool, Mr. Justice Erle.—Farrell *v.* Harrison—Mr. Atherton.

Moved after the 4th day of Michaelmas Term, 1848.

Middlesex, Mr. Baron Platt.—Bull, admor., &c., *v.* Ranken—Mr. Serjeant Wilkins.

Middlesex, Mr. Baron Platt.—Mercy *v.* Galot—Mr. O'Malley.

Middlesex, Mr. Baron Platt.—Hora *v.* Thornborough—Mr. Charnock.

London, Mr. Baron Platt.—Black *v.* Humphrey—Mr. Knowles.

Moved Hilary Term 1849.

Middlesex.—Lord Chief Baron.—Hamersham *v.* Wolverhampton Water-Works Company.—Mr. Martin.

Middlesex, Lord Chief Baron.—Wheeler *v.* Stiles (in replevin,)—Mr. Watson.

Middlesex, Lord Chief Baron.—Manning *v.* Wilkin—Mr. Watson.

London, Lord Chief Baron.—Thompson and another *v.* Bailey and others—Sir F. Thesiger.

London, Lord Chief Baron.—Nicholson *v.* Rayne—Mr. Martin.

London, Lord Chief Baron.—Richardson *v.* Barnes—Mr. Gurney.

London, Lord Chief Baron.—Wakley *v.* Healey and another—Defendant Healey in person.

Moved after the 4th day of Hilary Term, 1849.

Middlesex, Mr. Baron Rolfe.—Waller and another *v.* Pocock——Mr. Knowles.

Middlesex, Mr. Baron Rolfe.—Bussey *v.* Ellerton—Mr. Martin.

Middlesex, Mr. Baron Rolfe.—Foley *v.* Snell—Mr. Martin.

Middlesex, Mr. Baron Rolfe.—David *v.* James and another—Watson for defendant James.

Middlesex, Mr. Baron Rolfe.—Hawkins *v.* Harwood—Mr. Chambers.

Middlesex, Mr. Baron Rolfe.—Brook *v.* Rawl—Same.

Middlesex, Mr. Baron Rolfe.—Warden *v.* Bunsen and another—Mr. Chambers.

London, Mr. Baron Rolfe.—Dalton *v.* Rush—Mr. Gurney.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 21, 1849.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

COMMENCEMENT OF EASTER TERM. BUSINESS OF THE COURTS. NISI PRIUS SITTINGS.

EASTER TERM commenced on Monday. The public reception which used formerly to precede the sitting of the Courts on this day having been dispensed with by Lord Cottenham, Westminster Hall and its precincts presented a remarkable absence of the bustle and excitement which formerly distinguished the first day of Term.

The arrear of causes in all the Courts, and especially in the Equity Courts, taking the whole into account, is unusually light, and unless the operation of the Act for Winding-up the Affairs of Insolvent Joint-Stock Companies produces an increase of business, it does not appear that any considerable influx of new cases is expected. Vice-Chancellor Knight Bruce had no business to occupy his attention on the first day of Term, and Vice-Chancellor Wigram sat only for a few minutes.

In the Court of Queen's Bench, Lord Denman and Mr. Justice Wightman were both absent on Monday from indisposition, and idle rumour was at once busy in selecting a successor for the learned and venerable Chief Justice, and for one of his colleagues. We are concerned to observe, that neither Lord Denman nor Mr. Justice Wightman have yet sufficiently recovered to take their places on the Bench.

As usual of late years, all the Common Law Courts have been engaged, almost exclusively during the week, in hearing applications for new trials in cases tried on the Circuits and at the last Town Sitting, so that the arrears in this branch of business, existing at the rising of the Courts after Hilary Term, promise to be considerably augmented. In the Queen's Bench, on the first day of Easter Term, there were already 49 rules for new trial waiting for argument, and two for judgment. In the Court of Common Pleas there were 61 new trials for argument, and eleven for judgment, and in the Court of Exchequer there were 53 new trials for argument, and three for judgment.

The Nisi Prius Sittings in Term have already commenced in all the Courts, and the entries are so large as to render it probable that one of the judges of each Court will be continuously engaged in the dispatch of this description of business during the greater part, if not the whole of the Term.

In this and preceding numbers, we have laid before our readers lists of the Nisi Prius Causes in Middlesex and London made remanets at the conclusion of the Sittings after Hilary Term, in the three Courts of Common Law. An analysis of these papers suggests matter for grave consideration, and induces the repetition of an inquiry, whether some means should not be adopted to prevent the delay of justice occasioned by the accumulating arrear of causes waiting for trial.

It appears that the number of causes set down for trial in the Court of Queen's

Bench, and remaining untried at the conclusion of the Sittings after Hilary Term, was, in Middlesex 122, and in London 48, total 170; and of this number 86 are marked as special juries. In the Court of Exchequer the remanets left after the Middlesex Sitting number 66, and in London 80, total 146, of which 65 are marked as special juries. In the Common Pleas the number of Middlesex remanets does not exceed 22, and in London 58, total 77, of which 54 are special juries.[a]

To these formidable lists of arrears may be added, the number of causes set down for trial since the conclusion of Hilary Term, a period of nearly a quarter of a year, the precise amount of which we are unable just now to calculate. Many of the 393 causes included in the remanets from the Sittings after Hilary Term, were set down for trial after the preceding Michaelmas Term, and all must have been ripe for trial at the latest in the middle of January last.

If the present arrangement for the dispatch of Nisi Prius business remains unaltered, a very considerable period must elapse before the cases made remanet after Hilary Term, can be called on for trial. Under the statute 1 Will. 4, c. 70, no more than six days can be appropriated to Nisi Prius Sittings in London and Middlesex after Easter Term; and in those six days it can scarcely be anticipated that any material reduction will be effected in the list even of the Common Jury causes, and by the established practice of all Courts, at the short Sitting after Easter Term, no Special Jury causes are tried. The larger proportion of the causes entered for the Sittings after Hilary Term will have to stand over until after the middle of June, and as the Nisi Prius Sitting after Trinity Term for London and Middlesex, is limited to twenty-four days, it is more than probable that some of the cases made remanet after Hilary Term may not be tried before December next; and by the ordinary practice of the Courts, the successful parties will not be entitled to sign judgment in such cases until the fifth day of Hilary Term, 1850.

The inconvenience, injury, and positive injustice produced by such postponements, are incalculable; and we have never heard it suggested, that the evil consequences are modified or mitigated by delay. It has been contended, that it is judicious to discourage men from entering into litigation; but when the expense and anxiety of an action have been incurred, and nothing is wanting but the attention of the tribunal appointed by the law, to determine between the litigant parties, the attendant evils of litigation are aggravated by delay, and respect and confidence in the law affected by the dissatisfaction which the inadequate machinery for its administration has created. The contingencies arising from the loss of evidence, and the bankruptcy, insolvency, and death of parties, are seriously increased when the trial of a cause is suspended, without any default of the litigants, for the greater part of a year.

A grievance of such magnitude ought not to be allowed to continue without an attempt to apply a remedy, more especially as the increase of the evil complained of is almost certain to follow from permitting the present system to remain unaltered. Any considerable accumulation of the arrears could only be reduced by an entire change of system, whilst, as we have already taken occasion to suggest, the existing arrear may be successfully dealt with, if two Judges of each Court were to sit at Nisi Prius after Term, instead of one.

This simple arrangement would add in effect 78 days to the Nisi Prius Sittings in each year, and it does not strike us that any serious practical inconvenience would arise if one Judge were to try Special Jury causes whilst the other was engaged in the trial of Common Jury causes. A few of the leading Nisi Prius advocates may complain of such an arrangement; but we do not do them the injustice to suppose they would desire their personal convenience or interests to stand in the way of what would clearly be a public benefit. At all events there is such a superabundance of talent at the Bar, in all its branches, that the last thing to be apprehended is a lack of advocates.

[a] The Queen's Bench Remanets are printed, *ante*, p. 462; the Exchequer Remanets, p. 442; and the Common Pleas Remanets, *post*, p. 501.

MISREPRESENTATIONS OF ADVERTISING AND PRETENDED LAWYERS.

Our attention has been directed to certain advertisements, which have recently appeared in the daily newspapers, offering professional advice and assistance to those involved in pecuniary embarrassments, and promising to procure "final orders," under the Bankrupt Protection Acts, upon terms so encouraging, that the only surprise is that any one suffers himself to be troubled for payment of a debt, and that the state con-

tinues to sustain the expense of keeping up the debtors' prisons! To prevent all uncertainty as to the expense of obtaining relief, the moderate sum of 6*l.* or 8*l.* is specified as the amount the insolvent is expected to disburse, and to remove all misgivings as to the effect of the promised protection, the advertisers expressly state, that their panacea is so potent as to supersede the operation of the warrants issued by the Judges of the County Courts. We are concerned to find, to a few of those advertisements, the names of persons who are or have been on the Roll of Attorneys. For the most part, however, the advertisers are persons wholly unconnected with the legal profession, and whose proceedings require to be closely watched.

But whether emanating from persons by some accident connected with the profession, or from those who fraudulently assume the character of lawyers without any title, we hesitate not to describe the announcements to which we have referred, as impudent attempts to cheat and deceive the public, and feel that we discharge a duty in warning the ignorant, the unwary, and the embarrassed, against being deluded by the misrepresentations of persons who are for the most part as incompetent as they are unprincipled. The public should be informed, that no man of character or respectability in any branch of the legal profession, endeavours to obtain clients or business by means of public advertisements, and that those who resort to such irregular and discreditable devices are wholly undeserving of confidence. It is, perhaps, scarcely necessary to add, that the statements put forth by the charlatans who seek to impose upon the credulous, through the medium of advertisements, are for the most part ludicrously erroneous.

Reverting to the statements already alluded to, we may remark, that it must be impossible accurately to fix before-hand the precise sum required to cover all the expenses in any particular case. The outlay, in any case, will depend upon circumstances not within the control of the petitioner or his legal adviser. For example, notice is to be given to the creditors named in the schedule, by an officer of the Court, who is authorised to charge for the performance of this duty in protection cases, no less than eighteen pence for each notice. If there be one hundred creditors, therefore, requiring notice, (no unusual number, we believe, to be found in an insolvent's schedule,) this single item requires an actual outlay of no less than 7*l.* 10*s.*, and that sum may be diminished or increased, in proportion to the number of creditors requiring notice. The advertising gentry, who undertake that the whole expense shall not exceed a sum beyond that just named, will, no doubt, be more than compensated by that amount for any *benefit* conferred on the unfortunate client; but the intended fraud is transparent, when the advertiser professes to conduct the whole proceeding for a sum which in three cases out of four, would not pay the office fees, to say nothing of the fees of counsel, who have,—rightly or wrongly, we shall not stay to inquire,—contrived to obtain exclusive audience in the Insolvent Court. Those who suppose that an order under the protection acts, is to be obtained by any person as matter of course, and merely for the application, will find themselves grievously mistaken, even if they should make the attempt with the assistance of competent advisers.

The representation that such an order, when obtained, secures the possessor from the operation of process issued by the County Court, is also, it seems, erroneous. We have lying before us, the written judgment of one of the most learned and experienced of the Judges of the County Courts, Mr. Serjeant Manning, in a recent case, where this point was taken before him. The learned Serjeant, as Judge of the Whitechapel County Court, on the 15th Sept. last, made an order for the committal of a defendant for ten days, for non-payment of a debt which he was previously ordered to pay, and had neglected to pay; and it was urged on behalf of the defendant, that as he had obtained a protecting order from the Insolvent Court, under the statutes 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, he was not liable to committal under process from the County Court. The learned Serjeant, however, was of opinion, that the warrant issued from the County Court was not in the nature of process to enforce payment of a debt, but a proceeding to punish disobedience, not affected by either of the acts referred to. This view of the law, we have reason to know, has been followed by several other Judges of the County Courts, and as no one has yet thought it expedient to cause it to be questioned or reversed by any of the Superior Courts upon a writ of *habeas corpus*, we are justified in concluding, that it is the correct construction of the law.

The parties who publicly put forth misrepresentations, such as we have alluded to,

inflict a serious mischief upon society; and do all that in them lies to bring discredit upon the law and its administration. We do not despair, however, of rendering them comparatively impotent, by the instrumentality of the same agency with which they endeavour to deceive and defraud the community. Exposure, through the medium of the public press, will it is hoped, operate as a sufficient warning, and preserve many from the snares of those merciless and vulgar impostors.

THE INTENDED NEW RECORD OFFICE.

An admirable plan, long under the consideration of the Master of the Rolls, for erecting a Record Office for all the records now deposited in various distant and insecure places, was approved by the Government in the Session before the last. Connected with this design, it was intended to form a new street from the Record Office across the Rolls' Estate to St. Paul's; and westward along Carey Street, which would be widened, and joining Long Acre and the new street to Piccadilly.

It appears that the necessity for postponing every possible outlay has delayed the execution of the plan. In the 10th Report of the Deputy Record Keeper, recently transmitted to her Majesty by the Master of the Rolls, the following observations show that the subject has not been lost sight of, and that its importance is by no means diminished. It appears, indeed, from the Report that the State Paper Office is to be consolidated with the Record Office:—

"It was stated in the Ninth Report, (III. § 1,) that your Majesty's Commissioners appointed "to inquire into and consider the most effectual means of improving the Metropolis, and of providing increased facilities of communication within the same," had, by their Sixth Report, submitted to your Majesty, proposed that the ground composing the Rolls' Estate, and certain other properties in the neighbourhood, should be the site of the New Record Repository, and that the requisite parliamentary notices had been given for carrying into effect the recommendation above referred to; and, furthermore, that the site selected met with the most unqualified approval of Lord Langdale. But the bill, for which the parliamentary notices were given in November, 1847, was not proceeded with, nor has any further official communication or transaction ensued.

"The great and imminent hazards to which your Majesty's Records are continually exposed from the insecurity of the repositories in which they are placed, and the obstructions to the convenient use of the Records by the public occasioned by the want of sufficient accommodation, have been frequently represented to your Majesty, and they remain wholly unabated, to the great detriment of the public service."

COPYHOLD ENFRANCHISEMENT BILL.

Mr. Aglionby's Bill "to effect a *compulsory* Enfranchisement of Lands of Copyhold and Customary Tenure," has just been printed. The following is the substance of the bill:—

1. *As to Commutation.*

The following manorial rights may be commuted on application of a tenant: — Fines, rents, heriots, right of timber, forfeiture for waste, &c.; s. 1.

The proceedings for compulsory commutation on application of a tenant are then stated; ss. 2, 3.

Provisions for correction, with consent, of errors in instruments of commutation, and evidence of such commutation; ss. 4, 5.

Directions for guidance of Commissioners, and for facilitating their inquiries, and as to expenses (under proceedings for a commutation); ss. 6—14.

Effects and consequences of commutation; ss. 15—18.

Provisions concerning recovery of consideration, and charging same on the lands commuted; s. 19.

Incorporation of provisions of former acts as to commutation; s. 20.

2. *As to Commutations and Enfranchisements.*

Commutation or enfranchisement may be effected for rent-charges or fines fixed (instead of being variable as tithe-rent charge); s. 21.

Instruments of commutation and enfranchisement to be conclusive; s. 22.

Provision for apportionment of consideration; for joint lords; and exceptions out of the operation of the act; ss. 23—25.

3. *Miscellaneous Provisions.*

Agreements, &c. exempt from stamp duty; s. 26.

Provision for fixing the amount of stewards' fees by the Commissioners and one of the Taxing Masters in Chancery; and for their taxation under provisions of 6 & 7 Vict. c. 73. ss. 27, 28.

Incorporation with former acts; s. 29.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

ANNUAL INDEMNITY.

12 VICT. c. 9.

An Act to indemnify such persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the time limited for those Purposes respectively until the Twenty-fifth day of March, one thousand eight hundred and fifty. [3rd April, 1849.]

Reciting 1 G. 1, st. 2, c. 13; 13 C. 2, st. 2, c. 1; 25 C. 2, c. 2; 30 C. 2, st. 2; 8 G. 1, c. 6; 9 G. 2, c. 26; 18 G. 2, c. 20; 6 G. 3, c. 53; 9 G. 4, c. 17; 10 G. 4, c. 7.

1. Persons who have omitted to qualify themselves as required by the recited acts indemnified, and allowed further time.

2. Indemnity to those who have omitted to make and subscribe the oath and declaration required by the Irish act of 2 Anne.

3. Not to indemnify persons against whom final judgment has been given.

4. Not to exempt justices acting without legal qualification.

5. Admissions to corporations may be stamped after the time allowed.

6. Not to restore persons to any office avoided by judgment.

7. General issue may be pleaded.

DEFECTS OF LAW REPORTING AND PROPOSED REMEDY.

REPORT OF THE SPECIAL COMMITTEE OF THE LAW AMENDMENT SOCIETY.

THE Committee state that they have considered the two subjects submitted to them, and are of opinion that the present system of *law reporting* and *law book publication* are both capable of great improvement, and they set forth the evils arising from the present systems which appear to be of a very serious nature; and the Report thus proceeds to describe the great importance of the Law Reports:

Considering the subject of law reporting to be of a more urgent nature than the other branch of the present reference, your Committee have been induced to make a separate report thereon, reserving the general question of publishing law books for a future report.

The judicial decisions of the Superior Courts at Westminster, as reported in the volumes recognised by the Courts, constitute at the present day, almost equally with the statute book, *the law of the land.*

They are, to use the language of Sir Matthew Hale,[a] "the formal constituents of the common law;" and yet, by a singular inconsistency, whilst every act of parliament requires the sanction of the three estates of the realm, and its contents are communicated to the public in the most authentic form, the law laid down by our tribunals is in no respect *officially* promulgated. A statute creating the most trifling alteration in legal procedure is ushered into public notice in the most formal manner possible; a judicial exposition of one of the leading principles of our common law, materially affecting the future administration of justice, the rights of property, or the liberty of the subject, may take place without notice and without anticipation, amidst an inattentive crowd, whilst the voice of the Judge who delivers it may not reach any one beyond the parties immediately interested in the case which gives rise to it.

This remarkable inconsistency is productive of greater inconvenience at the present day than at any previous period. The concurrent jurisdiction of the Superior Courts; the establishment of local tribunals; the extensive jurisdiction of the Quarter Sessions, and other courts remote from Westminster Hall, render it indispensable, in order to secure uniformity in the administration of justice, that the reports of the judicial exposition of the law at the fountain head, should be accurately and expeditiously published, and in such a form as to secure their being generally accessible to all who are either officially or professionally engaged in administering it.

This is well and forcibly stated, and the Committee then notice that the anomalies connected with the system of law reporting have become especially conspicuous in modern times.

The legal decisions which, in more remote ages seem to have been preserved in the memory of official recorders,[b] we know, were in this country, during many reigns, promulgated by officers of the Courts in an authentic form. The growth of our reporting system is thus described by the two great commentators on the laws of England.

Lord Coke observes:—[c]

"Of ancient time, in judgments at the Common Law, in cases of difficulties, either criminal or civil, the reasons and causes of the judgment were set down in the record; and so it continued in the reigns of Edward I. and most part of Edward II.: and then there was no need of reports. But in the reign of Edward III.. (when the law was in its height,) the causes and reasons of judgments, in respect of the multitude of them, are not set down in the record; but then the great casuists and reporters of cases, (*certain grave and sad men,*) published the cases and the reasons and causes of the judgments and resolutions which, from the beginning of the reign of Edward III. and since, we have in print."

Sir William Blackstone's remarks on the system of reporting in his time are of a less favourable nature:—"The Reports are extant

[a] C. L., c. 4, 139, ed. by Runnington.

[b] See an article on this subject in the "Edinburgh Review," for August, 1820, title Laws of the Scandinavians.

[c] 4 Inst. p. 4.

in a regular series from the reign of King Edward the Second inclusive; and from his time to that of Henry the Eighth, were taken by the prothonotaries or chief scribes of the Court, at the expense of the crown, and published annually, whence they are known under the denomination of the *Year Books*. And it is much to be wished that this beneficial custom had, under proper regulation, been continued to this day: for though King James the First, at the instance of Lord Bacon, appointed two reporters, with a handsome stipend, for this purpose, yet that wise institution was soon neglected, and from the reign of Henry the Eighth to the present time this task has been executed by many private and contemporary hands, who, *sometimes through haste and inaccuracy, sometimes through mistake and want of skill, have published very crude and imperfect (perhaps contradictory) accounts of one and the same determination.*"[d]

The Report then states the defects of the present system.

Many subsequent writers[e] have denounced our system of law reporting, and the seventy years which have elapsed since Sir William Blackstone wrote, have added to, rather than diminished, some of the evils he points out; for though in respect of accuracy, completeness and skill, the reporters of the present day have cured many of the faults of their predecessors, yet from the vast increase of new questions of law and practice which at the present day annually arise in our courts, and the great inducements which thence arise for comprehensive reports, a new evil has grown up, unknown in the days of the learned commentator,—that the reports of the decided cases in any year for one term in any of the Superior Courts at the present day, exceed, in bulk, those of all the tribunals in the country for the whole year at the period alluded to.[f] Competition, ordinarily productive of so much good, in this instance adds to the evil. The higher class of reports, which really are, or ought to be the records of the existing law, are made as elaborate as the cases will admit of. The whole of the written pleadings, the documentary evidence, the speeches and arguments of counsel, with the various authorities cited on each side, are often given even in cases where the actual decision of the Courts really expounds no new doctrine of law, or is confined to some isolated point. The time which is necessary to effect this, often prevents the decisions of our tribunals being communicated to the public until long after they have been given, and after suitors have taken a course in direct but unconscious opposition to them, and occasionally, even after other judges have unknowingly pronounced directly conflicting decisions. The bulk and expense too of these reports render their contents inaccessible to the great majority of those who are officially or professionally expected to be acquainted with them, and the supply of rival productions simply adds to the cost without diminishing the inconvenience.

The Committee observe, that it has long been considered a practicable scheme for any barrister or bookseller who unite together with a view to notoriety or profit, to add to the existing list of Law Reports.

It may be that such reports may be rarely referred to, that they may be inaccurate, that they may be of little or no authority,—they nevertheless remain. They tend to confuse the science; they muddy the stream and bring on, more especially in some after age, all the evils described by Blackstone. A case of great importance[g] was decided a few years ago upon the authority of a note in Lofft's Reports,[h] which one of the learned judges observed, with some bitterness, he had never heard three cases quoted from during a professional life of forty years;[i] and some of the inferior law reports of the present day may, perhaps, meet a similar fate. But even if all the reports which are published were correct and given by competent persons, they are now so numerous that they cannot be known to one tithe of the practitioners in the law. They are beyond the reach, not only of the public, but of the great body of the profession. Indeed, it is not too much to say that few of the judges or the bar (and hardly any of the solicitors) take in all the current reports. Wherever there is the smallest opening, the profitable trade of law bookselling establishes a fresh series of reports. In each of the Common Law Courts, it is true the rival series of reports which have been recently the longest established have been amalgamated; but long before this point was gained numerous series of reports had been set on foot, professedly confined to *practice cases, criminal cases, sessions' cases, registration cases, railway cases, parliamentary cases, &c.*, but containing reports of decisions vouched as correct by barristers, whose accuracy must, under the existing system, be assumed.

[*To be concluded in our next Number.*]

[d] 1 Bl. Com., 71, 72.

[e] "The number of reporters, and the manner in which many cases are reported, are most serious evils,—evils which cannot be too much lamented, and sufficiently exposed. The contradictory statements of the same case, the confounding the arguments, nay, assertions of the counsel, with the decisions of the Courts, the *obiter* and extra-judicial sayings of the Judges with the grounds of the judgment, the observation of the reporter with the points of the case, call aloud for the nicest and severest discrimination."—*Watkins' Principles of Conveyancing*, Introduction, p. xiii.

[f] Some curious statistics of the Reports are given which we must for the present defer.

[g] Smith *v.* Doe dem Jersey, 1 B. & B. 97; 2 B. & B. 536.

[h] Hottley *v.* Scott, Lofft, 316.

[i] Observations of *Park*, J., 2 B. & B. 536.

THE PUBLIC ROADS BILL.

APPOINTMENT OF CLERKS.

The 7th section of this bill authorized the County Roads Board to appoint a *fit and proper* person to be clerk to the board, and to fix his salary, and at their discretion to remove him; and the 48th section authorized the wardens to appoint a fit and proper person to be their clerk, and to determine, with the consent of the County Roads Board, the amount of salary.

The "fit and proper" persons are manifestly attorneys of a certain standing in the profession, whose experience, habits of business, and legal knowledge, would be essential to the discharge of the duties of the office. Those who hold appointments in the existing trusts should, of course, be preferred, and those for whom no adequate provision can be made under the new arrangements, should be duly compensated.

Such were our observations on this bill, so far as it affected the attorneys and solicitors; but there were various public grounds on which the measure was deemed objectionable, and after a debate which took place on Wednesday last, the 18th instant, the bill was withdrawn.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

The Annual Meeting of this Association took place on Wednesday last, the 18th inst., at the offices of the Association, No. 10, Lincoln's Inn Fields. John Hope Shaw, Esq., the Mayor of Leeds, and Vice-President of the Society, presided. Several members of the Committee of Management attended from Manchester, Liverpool, and other parts of the country. A full and very able Report was read by Mr. Shaen, the Secretary, detailing the measures adopted during the past year in furtherance of the objects of the association and for the promotion of the interests of the profession. The Report was very favourably received and adopted, and we shall be enabled shortly to lay before our readers the prominent parts of it. We were very glad to perceive, that the finances of the Association were in a flourishing state.

The annual election then took place of the Committee of Management;—Mr. Sudlow was appointed President, and Mr. E. W. Field and Mr. Crossley Vice-Presidents;—the rules and regulations of the Association were revised and passed;—a testimonial was presented to Mr. R. Maugham, the late Honorary Secretary, consisting of a piece of plate with a liberal "*quiddam honorarium;*"—and votes of thanks were passed to the Chairman and Committee of Management.

NOTES OF THE WEEK.

RUMOURED EXTENSION OF THE COUNTY COURTS.

It is said in *The Times* to be the understood "intention of government to extend the power of the County Courts to 30*l.* or 50*l.*, and at the same time to confer an equitable jurisdiction.

"It would confer a benefit in matters of insolvency heard in the Courts, to give a right of appeal to the Insolvent Debtors' Court. There is a difference of opinion among the Commissioners of that Court with respect to the operation of the act transferring the insolvency business to the County Courts. Two of the Commissioners are of opinion that all matters, including the appointment of assignees, are vested in the Judges of the Courts, and two entertain a contrary opinion.

"In the event of an alteration in the County Court Act, it would be advisable to allow parties the privilege of arranging their cases without going before the Courts, suffering judgment by default."

We have not been able at present to ascertain the intention of the law authorities, but question whether any definite plan has been settled for the consideration of parliament. As very material alterations are contemplated in Chancery procedure, we cannot believe that any equitable jurisdiction will be conferred on the County Courts, in which common law barristers almost entirely preside.

DEATH OF MR. STARKIE, Q. C.

We regret to record the death of this learned and much respected gentleman, which took place on Sunday last, the 15th inst., at West Lodge, Downing College, Cambridge. He was called to the Bar on the 23rd May, 1810; went the Northern Circuit; was one of the King's Counsel at Lancaster, and Downing Professor of Law in the University of Cambridge. He was also one of the Common Law Commissioners; one of her Majesty's Counsel; and a Bencher and Lecturer, or Reader, at the

Inner Temple. He ranked in the order of precedence next after Sir Fitzroy Kelly, and held at the time of his death the office of Judge of the Clerkenwell County Court.

He was the author of many excellent works, particularly on the Law of Evidence, Reports of Cases at Nisi Prius, and on Criminal Pleading, and the Law of Slander, &c.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Exparte Barber, In re London and Manchester direct Railway Co. April 16, 17, 18, 1849.

ABORTIVE RAILWAY COMPANY WITHIN JOINT-STOCK WINDING-UP ACT.

A railway company, formed for the purpose of "conveying passengers and goods," is an association within the provisions of the Joint-Stock Companies' Winding-up Act of 1848, *being for "a commercial or trading purpose, or for a purpose of profit;" and the company having failed, an order was made for winding it up under the provisions of the act.*

THIS was an appeal from Vice-Chancellor Knight Bruce, who had decided that the Joint-Stock Companies' Winding-up Act of 1848, did not apply to an abortive railway company.

The *Lord Chancellor*, in giving judgment, went over the clauses of the 7 & 8 Vict. c. 110, the Registration Act, and the 7 & 8 Vict. c. 111, the first Winding-up Act, so far as they described the companies to which these acts applied. The question was, whether a company for constructing a railway, and provisionally registered, was a company "for any commercial or trading purpose or for any purpose of profit." The words in the two acts were not precisely the same, but there was not any material difference; and considering the object of the company "to convey passengers and goods by railway," his Lordship held, that it was an association within the provisions of the Act of 1848, and therefore made an order for winding-up the company.

April 16.—*Exparte Spackman, In re the Agriculturist Cattle Insurance Co.*—*Cur. ad. vult.*

— 16—*Fitch* v. *Rochfort*—Stand over.

— 16, 17, 18.—*Tempest* v. *North Western Railway Company*—Order of the Vice-Chancellor of England discharged with costs.

— 18.—*Dimes* v. *Grand Junction Canal Company*—Stand over.

Rolls' Court.

Bridson v. *Benecke and others.* 16th April, 1849.

INFRINGEMENT OF PATENT.—TRIAL.—INJUNCTION.

A verdict on a trial at law having been given in favour of the patentee, an injunction will be granted, although a bill of exceptions has been tendered.

THE plaintiff had invented improvements in stretching, drying or finishing muslins, and in the machinery by which the improvements were effected. He had been assisted by one Latham, and a patent was granted in the joint names. It was alleged that the defendants had infringed the patent, and a motion for an injunction was made in Hilary Term last, which stood over till a trial at law. The defendants pleaded, that Bridson was not the first inventor, that the invention was not new, and the specification imperfect. A trial took place, and a verdict was given in favour of the patentee, but a bill of exceptions had been tendered. It was now moved, that notwithstanding the bill of exceptions, an injunction should be issued.

Turner and *Humphreys* for the plaintiffs; *Roupell, Cole*, and *Webster* for the defendants.

The *Master of the Rolls* said, that although the bill of exceptions might render the verdict of no avail, the Court would not be absolutely bound by the decision at law; and under the circumstances an interlocutory injunction ought to issue.

April 16.—*Attorney-General* v. *Shield*—Stand over to next Seal—Interim injunction to restrain bringing action at law, continued.

— 17.—*Lewis* v. *Elliot*—Injunction dissolved restraining action at law—Execution not to issue, but leave reserved to bring the money into Court.

— 17.—*In re Beale*—Stand over.

— 18.—*In re Remnant*—Stand over.

— 18.—*Lord Suffield* v. *Whalley*—Part heard.

Vice-Chancellor of England.

Douglas v. *Smith.* March 24, 1849.

ANNUITY DEED.—DELIVERY UP TO INSOLVENT GRANTOR.

Held, *that the grantor of annuity, having taken the benefit of the act, was not entitled to sue for the delivery up of the annuity deed, which had been found void at law, as the stat.* 1 & 2 *Vict. c.* 110, *s.* 86, *discharged him from all liability and vested his property in his assignees.*

THIS bill was filed by the grantor of an annuity of 50*l.*, for the life of the plaintiff, secured upon the profits derived from the office of Registrar in the Archdeaconry Court of Norfolk, to have the annuity deed delivered up to be cancelled. The Court of Common Pleas had declared the memorial void, on the ground that it was not stated when a banker's cheque, forming part of the security, was payable; and the annuitant was thereupon called on to deliver up the deed, but he refused. For the defendants it was contended, that the plaintiff,

having taken the benefit of the Insolvent Debtors' Act, 1 & 2 Vict. c. 110, was discharged under the 80th section, which enacts, "that the discharge of any such prisoner so adjudicated as aforesaid shall and may extend to any sum or sums of money which shall be payable, by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant," &c., and that, as the whole of his property vested in his assignees, he could not compel the delivery up of the deed. For the plaintiff it was urged, that as the annuity was a continuing charge, he had still a right to the delivery up of the instrument found bad at law, and that the cases only showed he could not sue for property.

Daniell for the plaintiff; *J. Parker* and *Renshaw*, contrà, cited *Heath* v. *Chadwick*, 2 Phill. 649, as showing that the plaintiff could not sue, and *Major* v. *Aukland*, 3 Hare, 77, against the plaintiff's right to have an instrument legally void delivered up.

The *Vice-Chancellor* said, that the 1 & 2 Vict. c. 110, s. 80, discharged the plaintiff from all liability, and clearly applied to the annuity in question, as vesting it in his assignees, and the bill must, therefore, be discharged with costs.

April 16.— *Penny* v. *Penny*— Injunction granted to restrain interference with partnership accounts until the bill for dissolution of partnership was disposed of.

— 18.—*Smith* v. *Pincombe*—Part heard.

Vice-Chancellor Knight Bruce.

Gordon v. *Hope*. Feb. 23, 1849.

MARRIAGE SETTLEMENT.—CONSTRUCTION.

Upon construction of a marriage settlement, held, *that the fund settled became vested in the children of the marriage as they attained* 21, *and to their representatives, if dead.*

THIS bill was filed by the plaintiff, claiming a sum of 50,000 rupees under a marriage settlement. It appeared that this sum was assigned to trustees upon trust for the husband for life, remainder to the wife for life, and after their deaths to be divided among the children or issue of the marriage who should attain the age of 21, and survive their parents. Their children all attained the age of 21; the two sons, however, died in the settlor's lifetime, one unmarried, and the other leaving a widow and three children, and the other child, a daughter, was the present plaintiff.

Bacon and *Law* for the plaintiff; *Lloyd* for the son's widow; *Wigram* and *Swift* for the son's three children, cited *Evans* v. *Jones*, 2 Coll. 516, and *Dalzell* v. *Welch*, 2 Sim. 319; *Martelli* for the executor of the other son.

The *Vice-Chancellor* held, that the fund became vested in the children only, as they respectively attained 21, and was payable to their representatives on their decease.

April 17.—*In re Tomlinson*—Petition dismissed by consent.

— 18.—*Exparte Maitland, in re Maclean*—Leave to assignees to apply in eight weeks if no proceedings to establish the proof of the additional debt were taken.

— 18.—*Exparte Berkeley, in re Tring Railway Company*—Stand over.

— 18.—*Exparte Bolckow, in re Maclean*—Leave granted to examine parties *vivâ voce*.

Vice-Chancellor Wigram.

M'Gregor v. *Bainbridge*. Feb. 28, March 1, 3. 1849.

SOLICITORS.—PARTNERS.—NEW TRIAL.

A new trial granted on the ground of surprise in the admission of evidence.

This was a motion for a new trial of an issue directed by this Court to the Court of Common Pleas, on the ground of misdirection, and that the verdict was against evidence, and obtained by surprise by the introduction of evidence of which no notice had been given. The issue was to inquire whether the joint solicitors of the Derbyshire, Staffordshire, and Worcestershire, and East and West Junction Railway Companies had agreed to be partners in the business transacted for the same; and if it were found that they were partners, to inquire whether they were by agreement to take the profits in equal shares. Upon the trial, the jury had found that they were partners and interested in the profits in equal shares,

Wood, *Pigott*, and *Cowling* in support of the motion; *Solicitor-General* and *Bramwell* contrà.

The *Vice-Chancellor* said, that the application on the ground of misdirection could not be maintained, nor was the verdict against evidence, but a new trial must be granted on the ground of surprise.

April 17.—*Lee* v. *Elmsley*—Bill retained for a year—with leave to bring action.

— 17.—*O'Brien* v. *Lord Kenyon and another*—Money paid into Court by consent.

— 17.—*Labouchere* v. *Clarkson*—Part heard.

— 18.—*Lucas* v. *James*—Bill dismissed with costs.

— 18.—*Hutton* v. *South Western Railway Company*—*Cur. ad. vult.*

Queen's Bench.

(Before the Four Judges.)

Doe dem. Bengo v. *Nicholls*. Jan. 13, 1849.

COMPETENCY OF INTERESTED WITNESS.—CONSTRUCTION OF LORD DENMAN'S ACT.

A witness called to support a will, under which he takes a legacy charged upon land the subject of the action, is not disqualified as a witness, under the 6 & 7 *Vict. c.* 85; *because it cannot be said the action is brought or defended in his immediate behalf.*

IN an action of ejectment, where the question

was as to the invalidity of one of two wills executed by the testator, a person named Laurie was called as a witness by the defendant, and stated on the *voir dire*, that he was a legatee to a large amount under the will set up by the defendant, and that his legacy was charged upon the land for which the action was brought. *Platt*, B., rejected the witness as incompetent, upon the ground that he was in effect a defendant in the action.

Upon a rule for a new trial, on the ground that Laurie's evidence was improperly rejected,

Crowder appeared to support the rule, and *M. Smith* showed cause against it.

Per Curiam. The act 6 & 7 Vict. c. 85, requires that in order to disqualify a witness, the action in which it is proposed to examine him should be brought or defended, not only on behalf of the witness, but on his *immediate* and individual behalf. In this case the witness was not immediately interested in the suit, though it might have been defended mediately for his benefit. [*Sage* v. *Robinson*, Exch. Mich. T., 1848, was cited.]

Rule absolute for a new trial.

April 16.—*Manchester, Sheffield, and Lincolnshire Railway Company* v. *Blinkhorn*—Rule *nisi* for new trial.

— 16.—*Bass and others* v. *Willes*—Rule *nisi* for new trial, on the ground of improper evidence being admitted.

— 16.—*In re Crawfurd, Reg.* v. *Keeper of Castle Rushin Gaol, Isle of Man*—Rule granted to quash writ of habeas corpus.

— 16.—*Philpotts* v. *Leaver*—Rule *nisi* for new trial, on the ground of misdirection.

— 16.—*Reg.* v. *Justices of Coleford, Gloucestershire*—Rule *nisi* for mandamus to rehear.

— 16.—*Alison* v. *Draper*—Rule for new trial on the ground of amendment made in the declaration.

— 16.—*Curlewis* v. *Reid*—Order to re-commit on writ of outlawry.

— 17.—*Lock* v. *Ashton*—Rule *nisi* for new trial, on the ground of excessive damages.

— 18.—*Keymer* v. *Sir Peter Laurie and others*—*Cur. ad. vult.*

— 18.—*Gilpin* v. *Clutterbuck*—Rule *nisi* for new trial, unless the plaintiff consented to strike the costs off the damages.

— 18.—*Reg.* v. *Betts and others*—Rule to enter general verdict for the Crown.

— 18.—*Fuller* v. *Patrick*—*Cur. ad. vult.*

— 18.—*Griffiths* v. *Marsey*—Rule *nisi* to set aside nonsuit.

— 18.—*Chapman* v. *Speller*—Rule *nisi* for new trial.

Queen's Bench Practice Court.

Anon. April 17, 1849.

SERVICE OF CLERKSHIP UNDER ARTICLES NOT ENROLLED.

The service of articles reckoned from their date, where the enrolment was the omission of the attorney and not of the clerk.

THIS was an application on behalf of an articled clerk to have the service of his articles reckoned from the date of their execution. It appeared from the affidavit in support of the application, that the applicant had served part of his time with one attorney, and was assigned to another attorney; and that, in consequence of some omission or neglect on the part of the attorney to whom he was articled, the indenture had not been enrolled within the period prescribed by the statute 6 & 7 Vict. c. 73.

Jones, in support of the application, urged that the applicant was not to blame for the omission, and that, in the event of the application being refused, his admission as an attorney would be delayed for a considerable period.

Coleridge, J., said, that it was necessary to be very particular in these cases. It was, however, very hard to visit the neglect upon the clerk, who might have to serve his time all over again in consequence of the negligence of his master. It was to be regretted some fine could not be imposed for such neglect on the part of the attorney, whose duty it was to take care that everything in regard to the Roll should be properly attended to. The application would, therefore, be granted.

April 16.—*Haddon* v. *Shearman*—Rule for a prohibition to the judge of the Bloomsbury County Court, granted.

— 17.—*Reg.* v. *Corporation of Wakefield*—Rule for mandamus to compel corporation to elect assessor for one of the wards.

— 18.—*Reg.* v. *Featherstonhaugh and another*—Certiorari granted to remove indictment.

— 18.—*Reg.* v. *Field*—Certiorari to remove indictment.

Common Pleas.

Fish v. *Kempton.* April 16, 1849.

SET-OFF AGAINST A FACTOR.

The Court will not allow a debt due from a factor to be set-off by a purchaser of goods from the factor, where such purchaser had notice of the sale being made as agent, though the name of the principal was not stated.

THIS was an action for goods sold and delivered, with a count for detinue. The question was, whether the defendant could set-off a debt due to him from the factors of the plaintiff, who had become bankrupt. At the trial the jury had found a verdict for the plaintiff on the ground that the goods were sold to the defendant by the bankrupts as factors, and that the defendant was aware they were so, though he did not know who were the principals.

Byles, Serjeant, moved to set aside the verdict; but

The *Court* held, that though a factor sold goods in his own name, yet the owner must be deemed the party dealt with, unless the goods

were placed in the factor's hands in a manner which would induce others to believe they were his own property. Where the purchaser had information that the goods were sold in the character of agent, the buyer could not set-off the bad debt of the agent against the owner's demand. The verdict, therefore, could not be disturbed.

April 16.—*Frances, (a pauper)* v. *Webb*—Rule to stay proceedings for costs by the attorney in an action which was compromised, refused.

— 16.—*Towne* v. *Lewis*—Rule for new trial refused.

— 16.—*Meeton* v. *Nichols*—Rule absolute for attorney to pay costs, on the ground that there was no such person as the plaintiff.

— 17.—*Gillingham* v. *Stewart*—Rule *nisi* for new trial.

— 17.—*Tindal and another* v. *Deering*—*Cur. ad. vult.*

— 18.—*Sainter* v. *Ferguson*—Rule for new trial refused.

Court of Exchequer.

Jones (assignee) v. *Smith.* Jan. 31, 1849.

NON JOINDER OF CO-ASSIGNEE.—GROUND OF NONSUIT.

In an action of contract a plea that plaintiff is not assignee, obliges him to prove that he is sole assignee, and if he is not sole assignee, it is a ground of nonsuit for non-joinder.

In assumpsit by the assignee of an insolvent debtor, the defendant pleaded that the plaintiff was not assignee of the estate and effects of the insolvent, and it turned out on the trial that a second person was also appointed assignee, but declined to act. A rule was afterwards obtained to enter a nonsuit, on the ground that the non-joinder of the second assignee was a fatal defect, and that the objection was properly taken under the plea denying that the plaintiff was assignee.

The rule was argued by *Martin* on behalf of the plaintiff, and *Miller* for the defendant.

The *Court* was of opinion (after consideration) that the case must be governed by the principle laid down in *Scott* v. *Godwin*, (1 Bos. & Pul. 67). The assignees of a bankrupt or insolvent stood in a different position from executors, each of whom was considered to represent the testator. Assignees by the statutes became parties to a contract made by the bankrupt or insolvent, and it was clear law that all must join in an action on the contract. One alone could not maintain an action upon a contract made by two or more. In an action of tort an assignee might sue, subject only to a plea in abatement, (*Bloxham* v. *Hubbard*, 5 East, 407); but in contract the objection of non-joinder might be taken advantage of by pleading that the plaintiff was not assignee, for he could not be said to be assignee unless he were sole assignee. Upon these grounds the rule to enter a nonsuit was made absolute.

April 16.—*Cobbett* v. *Sir G. Grey and another*—*Cur. ad. vult.*

— 17.—*Exparte Fowkes, In re Wilts, Somerset and Weymouth Railway Company*—Rule discharged to set aside award.

— 17.—*Gordon* v. *Rolt*—Rule *nisi* to set aside verdict.

— 16, 18.—*Duke of Beaufort* v. *Morris*—Rule *nisi* for new trial.

— 18.—*Cole, (a pauper)* v. *Perring and another*—Rule for a new trial refused.

— 18.—*Johnson* v. *Midland Railway Co.*—Rule *nisi* to enter verdict for defendants.

— 18.—*Middleton and others* v. *Barnard and others*—Rule *nisi* for new trial on the ground of misdirection.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

PRACTICE.

[For the previous Sections of this Series of the Digest in the present Volume, see

Law of Wills, pp. 11, 75, 439.
Law of Costs, p. 35.
Law of Evidence, p. 56.
Law of Attorneys, p. 341.

Courts of Equity:
Law of Property and Conveyancing, pp. 113, 401.
Principles of Equity, pp. 134, 380.
Practice, pp. 196, 421.
Pleadings, p. 361.
Bankruptcy, p. 158.
Courts of Common Law:
Construction of Statutes, p. 457.
Grounds and principles of actions, p. 476.]

AFFIDAVIT.

1. *Intituling.*—An affidavit intituled, "*W. W.*, carrying on business under the name or style of *W. T.* and Co., plaintiff, and *C. F.* defendant," the plaintiff having so described himself in the writ, was held sufficient. *White* v. *Feltham*, 3 C. B. 658.

2. *Form of jurat.*—"Sworn in Court the 5th day of November, 1846, before *E. V. W.*" (the judge's signature,) is a sufficient jurat. *Thorne* v. *Jackson*, 3 C. B. 661.

AMENDMENT OF WRIT.

Adding another defendant.—Statute of limitations.—This Court will not after plea allow an amendment of the writ and all subsequent proceedings, by adding the name of another person as defendant in order to save the Statute of Limitations as to such person.

Quære, Would such an amendment be allowed in the writ before declaration? *Goodchild* v. *Leadham and another, executors of Geo. Allen, deceased*, 36 L. O. 211.

ARBITRATION.

1. *Setting aside award.*—The Court will not set aside, or refer back, an award for an objection in point of law not apparent on the face of it; as, upon a suggestion that the arbitrator improperly treated as a penalty that which was, by the express contract of the parties, stipulated and ascertained damages.

So, whether it is the award of a professional or of a lay arbitrator. *Fuller* v. *Fenwick*, 3 C. B. 705.

Case cited in the judgment: Sharman v. Bell, 5 M. and S. 504.

2. *Attachment for nonperformance of award.*—A party attached for contempt in not performing an award, and sentenced to imprisonment for a definite period, is not, by undergoing such imprisonment, exonerated from the performance of the award.

And, *semble*, that an action upon the award may be maintained at the same time.

Course of proceeding for enforcing performance of award by attachment. *Reg.* v. *Hemsworth*, 3 C. B. 745.

BILL OF EXCEPTIONS.

Sealing.—Where a party has lost the benefit of a bill of exceptions tendered to the ruling of a judge at N. P., or at the Assizes, by the death of the Judge, and without any default on his own part, it is not competent to another judge out of which the record issues, to seal the bill of exceptions.

But in such a case the Court will, where the circumstances warrant it, allow the party to move for a new trial, notwithstanding the proper time for so doing has elapsed. *Newton* v. *Boodle*, 3 C. B. 795.

CHANGING VENUE.

Material evidence.—When the venue was brought back to Middlesex by an attorney plaintiff, upon an undertaking to give material evidence in the cause upon some matter in issue arising within the Courts of Middlesex: *Held*, that the production of the roll in evidence was a sufficient compliance with the undertaking, and also with the rule of Court. *Jones* v. *Smith and others*, 36 L. O. 474.

DISTRINGAS.

Lunatic.—Where the proper number of calls had been made at a lunatic asylum where a defendant was confined, with a view to serve the defendant (who had become a lunatic) with the copy of a writ of summons, and the defendant was informed that it was not consistent with the rules of the asylum to allow the lunatic to be seen, and the defendant thereupon explained the purport of his visit, and left a copy of the writ with the keeper: the Court granted a rule absolute for a distringas, but directed it to be served on the defendant's wife, and at his last place of residence, as well as at the asylum. *Matter* v. *Foulkes*, 36 L. O. 14.

EJECTMENT.

1. *Service of declaration.*—Service of a declaration and notice upon the tenant, by showing him the same, *off the premises*, and attempting to serve him with a copy, and to explain the same to him, and subsequently leaving a copy with a servant of the tenant on the premises, and explaining it to him: *Held*, sufficient. *Doe d. Hope* v. *Roe*, 3 C. B. 770.

2. *Service of declaration.*—A declaration and notice in ejectment were served on the daughter of the tenant in possession, on the premises, at 10 o'clock, P.M., of the day next before the first day of Term, upon which service a rule *nisi* for judgment against the casual ejector was granted. On showing cause against the rule, affidavits were put in denying that the notice was read over and explained to the daughter of the tenant in possession when served on her: *Held*, that as the tenant in possession did not, in the affidavits used in showing cause, swear that he did not understand what the declaration and notice meant until after Term began, the service was sufficient, and the rule must be made absolute. *Doe dem. Kenrick* v. *Roe*, 36 L. O. 55.

3. *Consent rule not signed.—Nullity.*—Where a party seeks to be let in to defend in the place of the casual ejector, the original consent rule must be delivered, with the plea of not guilty; and if the consent rule be not signed by the defendant's attorney, it is a nullity, although an appearance has been entered; and the plaintiff may sign judgment against the casual ejector. *Doe dem. Poole* v. *Willis and others*, 37 L. O. 241.

EXECUTION.

1. *Bankrupt.—Certificate.—Gaming.—Affidavits.*—Upon an application, at chambers, under the 5 & 6 Vict. c. 122, s, 42, to discharge a bankrupt who has obtained his certificate, from execution for a demand provable under the *fiat*, it is competent to the judge to receive affidavits to show that the certificate is void, by reason of gaming under s. 38.

In such a case, the *Court* has no *original* jurisdiction. *Clark* v. *Smith*, 3 C. B. 982.

Cases cited in the judgment: Davis v. Shapley, 1 B. & Ad. 54; Barrow v. Poile, 1 B. & Ad. 629; Wearing v. Smith, 16 Law J., N. S., Q. B. 173.

2. *Joint-Stock Companies' Act*, 7 & 8 *Vict. c.* 110.—It is no good preliminary objection to a rule *nisi* for issuing execution against a member for the time being of a joint-stock company, upon a judgment obtained against such company, under the 7 & 8 Vict. c. 110, ss. 13, 66, and 68, either that a previous rule, having the same object, had been discharged with costs, on the ground that there appeared no notice to the defendant to warrant it; or that the costs of such former rule still remained unpaid, and the Court, therefore, made such rule absolute, upon an affidavit of the matters required by the above act. *Corden* v. *The Universal Gaslight Company*, 37 L. O. 157.

HABEAS CORPUS.

To entitle a prisoner to a writ of *habeas corpus*, to bring him up to be present on the argument of a rule in which he is interested, he must satisfy the Court that substantial justice cannot be done without his presence. *Clark* v. *Smith*, 3 C. B. 984.

INSPECTION OF DOCUMENTS.

In an action by the secretary against a provisional committee-man of a projected railway company, for arrears of salary, a Judge at chambers ordered that defendant should be at liberty to inspect and take copies from the minute-book of the company containing resolutions of the managing committee, referred to in the plaintiff's particular of demand as the foundation of his claim.

The *Court* refused to rescind the order, the plaintiff not satisfactorily showing that it was not in his power to comply with it. *Shaw* v. *Holmes*, 3 C. B. 952.

INTERPLEADER ISSUE.

Nonsuit.—A nonsuit may be entered in an interpleader issue, where the plaintiff does not appear on the trial.

Semble, he must apply to the judge granting the interpleader issue to remedy the consequences of his neglect in not appearing. *Gillingham* v. *Stewart*, 37 L. O. 259.

JUDGMENT.

1. *Nunc pro tunc after plaintiff's death, where proceedings delayed by act of Court.*—In a cause in which issues of fact and of law were joined, the plaintiff went to trial on the issues of fact, and had a verdict. The defendant obtained a new trial; and a second verdict was given for the plaintiff. The defendant again moved for a new trial; and the rule was discharged in Trinity Term, 1844, three years after the first trial. The plaintiff, in the same term, set down the demurrers for argument; but, before the state of business admitted of the case being heard, he died. Judgment was afterwards given for the plaintiff on the demurrers, defendant not appearing.

Held, that leave might be granted to enter up judgment as of Trinity Term, 1844, the decision of the issues in law having been delayed till the plaintiff's death by the act of the Court. And such leave was given in a cause consolidated with the former by rule of Court, and not differing from it in any material respect. *Miles* v. *Williams*, 9 Q. B. 47.

2. *Proof of, on nul tiel record.*—In debt on a judgment, the declaration alleged that the plaintiff recovered a judgment against the defendant "in the Court of our Lady the Queen, of her Bench at Westminster, in the county of Middlesex." The defendant pleaded, "that there was not any record of the said supposed recovery remaining in *the said Court of our Lady the Queen*, before the Queen herself at Westminster, (named in the declaration the Court of our Lady the Queen of her Bench at Westminster), in manner and form as in the declaration alleged." The plaintiff replied, "that there was such a record of the said recovery remaining in the said Court of our Lady the Queen of her Bench here, in manner and form as the plaintiff had in the said declaration above alleged."

Held, that the plaintiff proved the affirmative of the issue, by the production of a record of a judgment recovered in this Court. *Bradley* v. *Gray*, 3 C. B. 726.

3. *Entering judgment.*—The defendant having obtained judgment upon demurrers to two pleas, each going to the whole cause of action, and there remaining issues of fact untried—the Court refused to compel the defendant to enter a general judgment of *nil capiat per breve*, in order that the plaintiff might bring a writ of error without going down to trial upon the issues of fact. *Hinton* v. *Acraman*, 3 C. B. 737.

4. *Nunc pro tunc.*—Judgment can only be entered *nunc pro tunc*, where the delay has arisen from the act of the Court. *A.* obtained judgment against *B.*, *C.*, and *D.*, upon demurrer to certain pleas severally pleaded by them. Upon the trial of the issues of fact, at the sittings after Michaelmas Term, 1845, a verdict was found for *B.* and *C.*, upon the pleas of non assumpsit by them respectively pleaded, subject to a bill of exceptions; and the jury were discharged as to the other issues. The bill of exceptions was not settled and sealed until the 27th May, 1846, and consequently the postea remained in the hands of the associate until shortly after that time: negociations were pending between *B.* and *A.* as to the form in which the judgment should be entered for himself (*B.*) and *C.*, until the 22nd of August, and, before the form was finally settled between *B.* and *C.*, *B.* died:

The Court refused, at the instance of the executors of *B.*, to allow judgment to be entered up for him *nunc pro tunc*. *The Fishmongers' Company* v. *Robertson*, 3 C. B. 970.

5. *Appearance. — Irregularity.* — Where judgment was entered on a judge's order to confess judgment without an appearance having been first entered for the defendant, the Court held, that it was an irregularity merely and not a nullity, and that this irregularity was waived by the defendant's attorney having attended the taxation of costs and asked for time to pay the debt and costs; the bill of costs not containing any item for entering an appearance, being a sufficient notice that no appearance had been entered. *Grandin* v. *Maddons*, 37 L. O. 178.

JURISDICTION OF SINGLE JUDGE.

Change of venue after summons for time to plead. — The defendant having obtained a judge's order for further time to plead, without any condition therein as to changing the venue, abandoned it on the same day, and served upon the plaintiff, together with the general issue, a rule to change the venue, obtained upon the common affidavit. The plaintiff treated the rule to change the venue as a nullity, and obtained an order to set it aside at

chambers. But the Court set aside the latter order, holding that, although a judge at chambers had jurisdiction over a rule to change the venue obtained upon the common affidavit, yet that the defendant had not waived his right to change the venue. *Darrington* v. *Price*, 37 L. O. 55.

MANDAMUS.

1. *Jurisdiction.* — Mandamus, to the verderers of a royal forest, recited that the Chief Justice and Justice in Eyre had granted licence to the prosecutor to hunt, &c. in the forest, provided the licence were brought to the next Court for the said forest, to be enrolled among the records there: and that the defendants had refused to enrol: the writ therefore commanded them to enrol the licence at the next Court of Attachment. Return, that the forest was not within any manor, &c. of the prosecutor, nor was he seised, &c., of the said forest, for any estate whatever; and that the licence purported to extend over lands within the forest, of which *A.*, *B.*, and *C.* were seised of estates of freehold, and were the occupiers: *Held*, on demurrer to the return, that the licence was void as to the last-mentioned lands, and therefore the Court could not grant a mandamus to enrol it.

The defendants also returned, that the verderers had not been required by the Chief Justice and Justice in Eyre, or by any Court of the forest, to enrol the licence.

Held, on demurrer to the return, that this also was an answer to the writ, for that the Court of the Chief Justice in Eyre had power to compel obedience in the verderers, who were its officers, and therefore the Court of Queen's Bench ought not to interfere, unless in a case of urgent necessity. Judgment for the defendants. *Reg.* v. *Conyers*, 8 Q. B. 981.

2. *Railway.*—The proprietors of a railway who have given notice of demand to take part of any premises for the purpose of their railway, are not compellable, under the 18th and 92nd sections of the 8 Vict. c. 18, to take the whole of such premises, though the owner of such premises has given them notice that he is "willing and able to sell and convey the whole thereof."

A mandamus issued upon such a notice cannot be sustained for the purpose of enforcing an assessment of damages as to part of the premises, but there must be a formal requirement of compensation as to part. *The Queen* v. *The Proprietors of the London and South-western Railway Company*, 36 L. O. 449.

NOTICE OF TRIAL.

1. A defendant is not bound to return an irregular notice of trial, though made aware, by a notice to produce, that the plaintiff is proceeding thereon. *Wood* v. *Harding*, 3 C. B. 968.

2. *Setting down cause.*—The form of a notice of trial is immaterial, if it be delivered in time, and clearly and unequivocally inform the defendant that the plaintiff intends to proceed to trial at a certain specified time.

It is not necessary that notice of trial should have been given before a cause is set down for trial. *Ginger* v. *Pycroft*, 36 L. O. 99.

OCTO VEL DECEM TALES.

Circumstances in which a writ of *octo vel decem tales* will be issued. *Burow* v. *Denman*, 36 L. O. 36.

PAPER BOOKS.

A party cannot have judgment upon a demurrer when the paper books have not been delivered on behalf of both parties. *Davy* v. *Lambert*, 36 L. O. 331.

PEREMPTORY UNDERTAKING.

An affidavit upon which a rule was obtained to enlarge a peremptory undertaking, stated as the ground for not going to trial, the absence of a material witness, but did not state the name of such witness: *Held*, not to be a ground for discharging the rule. *Wilkinson* v. *Willats*, 37 L. O. 96.

PROCESS.

Writ of summons.—A writ of summons describing a public company as "now or late carrying on business in King William Street, in the city of London," was served upon a director at Barnet, in Middlesex: *Held*, that both writ and service were irregular. *Pilbrow* v. *Pilbrow's Atmospheric Railway Company*, 3 C. B. 730.

PROHIBITION.

Right of insisting upon declaration.—Where a prohibition is applied for, the Court will always, on the demand of the party against whom the application is made, put the party applying to declare in prohibition. *Remington* v. *Dolby*, 9 Q. B. 176.

QUARE IMPEDIT.

In an action of quare impedit, the Court directed a writ to be sent to the Ecclesiastical Court, to inquire into the truth of an issue raised by the pleadings. *Reg.* v. *Bishop of Exeter*, 37 L. O. 256.

REJOINING GRATIS.

Making up record. — Rejoining gratis does not mean that the party is to rejoin in 24 hours.

Where a defendant is under terms to rejoin gratis and does not, the proper course is to sign judgment.

A plaintiff cannot, in order to make up the record in time for the assizes, add a rejoinder for the defendant, even though it should be in effect the same as that subsequently delivered by the defendant. *Lees* v. *Winterbottom*, 36 L. O. 287.

REMOVAL OF CAUSE.

On behalf of the Crown. — The Attorney-General may remove a cause out of the Common Pleas into this Court, upon a suggestion that the revenue of the Crown is affected: no affidavit is necessary. *Adams* v. *Freemantle*, 37 L. O. 10.

SERVICE OF WRIT.

Entering appearance.—Registered society.—Where a copy of a writ of summons had been

served upon the registered president (who was also a director) and four other directors of a loan society completely registered under the 7 & 8 Vict. c. 110, and it also appeared that, owing to the secretary's having left his place of residence and business, and, as it was believed, gone abroad, no service could be effected upon him, the Court, upon the application of the plaintiff, granted a rule *nisi* to enter an appearance for the society, to be served upon the same parties, which was afterwards made absolute, no cause being shown. *Wilson* (*Public Officer*) v. *St. John Equitable Loan Society*, 37 L. O. 74.

SETTING ASIDE PROCEEDINGS.

1. A declaration omitting to state whether the plaintiff sues in person or by attorney, is irregular; but the application to set it aside should be made at chambers. *White* v. *Feltham*, 3 C. B. 658.

2. The rule as to a Term's notice of proceeding, where no step has been taken for more than four terms, does not apply to a proceeding after verdict. *Newton* v. *Boodle*, 3 C. B. 795.

Cases cited in the judgment: May v. Wooding, 3 M. & S. 500.

3. On the 11th of November, the defendant was served with a writ of summons, indorsed for 6*l.* 5*s.* debt, costs 1*l.* 15*s.* On the 4th of December, the plaintiff delivered a declaration, and on the 14th full particulars of demand. On the 19th, the defendant took out a summons to stay proceedings on payment of 18*s.* without costs, swearing that no more was due, and that he was liable to be summoned to a Court of Requests; but, the plaintiff claiming more, no order was made. On the 24th, the defendant pleaded, except as to 18*s.*, *nunquam indebitatus* and payment, and, as to 18*s.*, payment into Court. On the 9th of January, the plaintiff took the money out of Court, and entered a *nolle prosequi* as to the rest. On the 20th of January, the plaintiff caused his costs to be taxed by the Master.

Held, that the plaintiff was entitled to no costs; and that the defendant was entitled to his costs incurred subsequently to the 19th of December.

And *Held*, that the defendant was not too late in applying to the Court on the 21st of January, to set aside the Master's allocatur. *Fletcher* v. *Tanner*, 3 C. B. 963.

SHERIFF.

1. *Ca. sa.*—*Held*, that the apprehension of a rescue is not a sufficient excuse in an action against a sheriff for not executing a *ca. sa.* *Ouden* v. *Standish*, 37 L. O. 193.

2. *Distringas.*—Where it appeared that the sheriff had been called on the 26th of November to return a writ of distringas, but no return was made until the 22nd of March; but it did not appear that plaintiff had suffered any injury by the delay of the sheriff, the Court refused to grant an attachment against him. *Stockbridge* v. *Bancombe*, 36 L. O. 14.

STAYING PROCEEDINGS.

1. The plaintiffs having brought 11 actions against as many directors of a railway company for the recovery of the same demand, the Court refused to stay proceedings in all the actions but one. *Giles* v. *Tooth*, 3 C. B. 665.

2. Two separate actions having been brought against two *joint-stock contractors*, in respect of the same demand, and the debt and costs in one action having been paid, a judge at chambers made an order staying the proceedings in the other action, *without costs*. The Court refused to rescind or vary the order. *Newton* v. *Blunt*, 3 C. B. 675.

Case cited in the judgment: King v. Hoare, 13 M. & W. 494.

SUMMONS.

The Court cannot take notice of a consent upon a summons, unless followed in due time by an order drawn up and served. *Wood* v. *Harding*, 3 C. B. 968.

TRIAL BY RECORD.

Variance.—Amendment.—In debt on a judgment, the declaration correctly stated the principal debt recovered, but varied in the amount of damages and costs; the sum stated in the declaration being less than that upon the record. The Court gave judgment for the defendant, refusing to amend at the trial.

An application to amend under such circumstances must be by a separate motion. *Billing* v. *Hitchings*, 35 L. O. 615.

See *Notice of Trial.*

VENUE.

In an action by *A.*, an agent employed by *B.* to cause advertisements to be inserted in newspapers, evidence that *A.* gave orders to *C.* to insert such advertisements, is material evidence, in the company in which such orders were given, to satisfy an undertaking upon bringing back the venue. *Parratt* v. *Benassit*, 3 C. B. 884, *n.*

See *Changing Venue; Jurisdiction of Judge.*

WARRANT OF ATTORNEY.

Date of execution.—Fraudulent preference.—Execution issued for too much.—A deed or other writing must be taken to speak from the time of the execution, and not from the date apparent on the face of it. The date is only to be taken *primâ facie* as the true time of the execution; but as soon as the contrary appears, the apparent date is to be disregarded, and the Court will not take into consideration the intention of the parties.

The Court will not set aside a warrant of attorney upon motion on the ground that it was given by way of fraudulent preference, but will leave that question to be decided by a jury. Nor will the Court set aside a warrant of attorney on the ground that execution was issued for too much, but will only set aside the execution *pro tanto*. *Browne* v. *Barton*, 36 L. O. 147.

WRIT.

See *Amendment; Process.*

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Easter Term, 1849.

Lord Chancellor.

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Attorney-General *v.* Jones, appeal.
Phillipson *v.* Gatty, Gatty *v.* Phillipson, appeal.
Staniland *v.* Willott, appeal.
Coward *v.* Coward, appeal.
Cooke *v.* Cholmondeley, Ditto *v.* Vaux, appeal.
Cole *v.* Scott, appeal.
Rackham *v.* Siddall, appeal.
Williams *v.* Powell, Ditto *v.* Davis, Price *v.* Powell, appeal.
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Stand over, Chambers *v.* Howell, plea.
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Vice-Chancellor of England.

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Vice-Chancellor Knight Bruce.

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S. O., Hughes *v.* Scarborough.
May 2. Powell *v.* Dodson,
Ditto *v.* Ditto.
Chapman *v.* Chapman.
S. O. Wood *v.* Ordish, fur. dirs.
May 7. Richardson *v.* Bebb.
Afiato *v.* Phillips.
Ditto *v.* Ditto.
Towne *v.* Clarke.
Ayling *v.* Kinton.
Smith *v.* North.
April 24, Haywood *v.* Grazebrook, exons. and fur. dirs.
James *v.* Gwynne
Ditto *v.* Evans
Ditto *v.* Harris
Boughton *v.* James, 5 causes.
Gude *v.* Worthington.
Davis *v.* Wilford
Ditto *v.* Baker
Ford *v.* Moline, fur. dirs. and costs.
Hook *v.* Sankey.
Graham *v* Fitch.
Mackenzie *v.* King, fur. dirs. and petn.
Ward *v.* Messenger.
Bennett *v.* Boughton, 6 causes, fur. dirs. and costs.
Rudd *v.* Headly, 2 causes.
April 28, Constable *v.* Bull.
April 30, Rashleigh *v.* Mount.
Batson *v.* Foot, fur. dirs. and costs.
April 30, Day *v.* Linton.
Blundell *v.* Stanley.
May 4, Fowler *v.* Reynal
Do. Brearcliffe *v.* Doubleday, 2 causes.
Jones *v.* Williams, 6 causes, fur. dirs. and costs.
May 4, Hancox *v.* Spittle.
Nelson *v.* Straughan.
May 4, Grind *v.* Hall.

Vice-Chancellor Wigram.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Sloane *v.* Brown, 2 demrs.
Trinity Term, Chandler *v.* Corke.
Ditto, Nesfield *v.* White.
Marshall *v.* Sladden.
S. O., Churchill *v.* Harnett.
Fussell *v.* Elwin.
S. O., Lassence *v.* Lescher.
Reynell *v.* Sprye
Ditto *v.* Ditto
Sprye *v.* Reynell
Ditto *v.* Ditto
Stocken *v.* King
Belcher *v.* Ditto
Penny *v.* Riky
Ditto *v.* Kelly
Kenna *v.* Singleton.
Wheeldon *v.* Perkin
Ditto *v.* Bridgwood
Dyke *v.* Rendall.
April 28, Bath *v.* Hippesley.
April 16, Labouchere *v.* Clarkson, fur. dirs. part heard.
Cargill *v.* Clarke.
Bateman *v.* Wilks, fur. dirs. and costs.
April 26, Attorney-General *v.* Murdock.
April 27, Langdale *v.* Kelham.
Lowis *v.* Burnie.
April 30, Kersteman *v.* Wood.
May 4, Aufrere *v.* Hill.
Attorney-General *v.* Phillips, fur. dirs. and costs.
May 4, Dott *v.* Hoyes.

COMMON LAW CAUSE LISTS.

Common Pleas.

REMANET PAPER FOR EASTER TERM, 1849.

Enlarged Rules.

To 1st day.—Francis *v.* Webb.
.. .. Meeten *v.* Nichols.
.. .. Smith and another *v.* Troup.

New Trial of Trinity Term, 1847.

Middlesex.—Barnes, administrator, *v.* Ward—to be re-argued.

New Trials of Easter Term last.

Middlesex, Kinning *v.* Buchanan, Gent.
Middlesex, Duke of Brunswick *v.* Slowman and others.
Middlesex, Same *v.* Same.
Middlesex, Same *v.* Same.
Middlesex, Sargent *v.* Gannon.
Middlesex, Bowyer, assignee, *v.* Long.
Middlesex, Thompson *v.* The Wesleyan Newspaper Association.
Middlesex, Same *v.* Same.
Middlesex.—Summers *v.* Davis, sued, &c.
Middlesex, Franklin *v.* M'Leod.
London, Richards *v.* London, Brighton, and South Coast Railway Company.
London, Lewis *v.* Campbell.
London, Walker *v.* Giles and another.
London, Bayley *v.* Wilkins.
London, Somerville *v.* Hawkins.
London, Jones and another *v.* Broadhurst.

Surrey, Pennell and others, assignees, *v.* Stephens. (Partly heard 30th Jan.)
Somerset, Lee *v.* Lester.

New Trials of Trinity Term last.

Middlesex—Sawyer *v.* Langford.
Middlesex.—Thorogood, admix. *v.* Bryan. (Cattlin *v.* Hills and others, moved in Hilary Term, 1849, to be argued with this rule.)
London.—French *v.* Candy and others.
London.—Maxey *v.* Thomas.
London.—Rathbone *v.* Clarke.
London.—Green *v.* Slack.
London.—Groom and another, assignees, *v.* Watson.
London.—Smith *v.* Thompson.

New Trials of Michaelmas Term, last.

Middlesex.—Morgan *v.* Field.
Middlesex.—Newton, Esq. *v.* John Chaplin.
Middlesex.—Russell *v.* Jubb.
Middlesex.—Smith *v.* Pritchard and others.
London.—Monaghan *v.* Walter and another.
London.—Fitch *v.* Martyr.
London.—Howard *v.* Mull.
London.—Smith and others *v.* The Hull Glass Company.
London.—Moss and others *v.* Smith and another.
London.—Stebbing *v.* Spicer.
Denbigh.—Doe Williams *v.* Sparrow.
Chester.—Worthington *v.* Warrington.
Essex.—Wilby *v.* Elston.
Sussex.—Doe Eversfield and others *v.* Troup.
Surrey.—Alcock *v.* Butt.
Surrey.—Cory *v.* Norfolk Railway Company.
Surrey.—Kempson and another *v.* Gayfere.
Surrey.—Hamilton *v.* Cochran.
Suffolk.—Doe Archer and another *v.* Johnson and another.
Suffolk.—Same *v.* Same.
Norfolk.—Heyhoe *v.* Burge.
Norfolk.—Morse and another *v.* Same.
York.—Duncan *v.* Topham.
Hants.—Pilgrim *v.* The Southampton and Dorchester Railway Company and another.
Bristol.—Acraman and others, *v.* Morrice.
Bristol.—Lewis, exor., *v.* Lloyd.
Glamorgan.—Doe Rogers *v.* Price and another.
Oxon.—Hicks *v.* Gregory, exor.

New Trials of Hilary Term last.

Middlesex, Cattlin *v.* Hills and others. (To be argued with Thorogood *v.* Bryan, moved in Trinity Term last.)
Middlesex, West *v.* Baxendale.
London, Barnes *v.* Troup.
London, Lindsey *v.* Barron and another.
London, Warren *v.* Peabody.
London, Vines *v.* Arnold.

CUR. AD. VULT.

Morgan and another, executors, *v.* Earl Abergavenny.
Phillips *v.* Lewis.
Nickels *v.* Ross, jun.
Same *v.* Same.
Garrard *v.* Tuck (in dower).
Fitzgerald *v.* Fitzgerald.
Hopwood *v.* Thorn.
Russell *v.* Briant.
Beard *v.* Egerton and others.
Croll *v.* Edge.
Wright *v.* Colls.

New Trial Rule suspended.

Becke *v.* Carter.

DEMURRER PAPER.

For Easter Term, 1849.

Monday . . April 16
Tuesday 17
Wednesday . . 18
Thursday . . . 19
} Motions in arrest of judgment.

Friday . . . . 20 Special Arguments.

Engstrom and others *v.* Brightman and others.
Reed *v.* Shrubsole.
Ward and others *v.* Dalton.
Munroe and others *v.* Bordier and others.
Gooch *v.* Shordiche.
Batty *v.* St. Aubyn, Clk.
Besset *v.* De Witte.
Graham and others, assignees, &c. *v.* Cox and another.
Wetherell *v.* Julius and another.
Field *v.* Walker.
Empson and another *v.* Knowles.
Sands and others *v.* Clarke.
Wilson and others *v.* Bevan.
Birch *v.* Rees.
Sinnaner, admix. *v.* Great Western Railway Co., loss of life.
Same *v.* Same, loss of goods.
Hill *v.* Kempshall.
Wood *v.* Governors and Company of Copper Miners in England. (The award entered subsequently to be argued with this.)
Smith *v.* London, and Brighton, and South Coast Railway Company.
Richards and another *v.* Egan.
Tate *v.* Hitchings, sued with others.
Robinson and ux. *v.* Marquis of Bristol and others.
Devaux and another *v.* Conolly.
Robinson and ux. *v.* Marquis of Bristol and others.
Peterson and another *v.* Davis.
Kinnersley *v.* Knott.
Doe dem. Brammall and another *v.* Collinge.
Westropp and others *v.* Solomon.
Fagan *v.* Harrison.
The Bamoen Iron Company *v.* Barnett.
Edwards and others *v.* Jevons.
Johnson *v.* Frew.
Gibbons *v.* Vouillon.
Greene *v.* Reece.
Wood *v.* Governor and Company of Copper Miners in England. (To be argued with demurrer.)
Porcher and another *v.* Gardner and others.
Bell and others, assignees, *v.* Bidgood.
Johns *v.* Dickinson.
Doe Cannon and another *v.* Rucastle.

Wednesday, April 25
Friday 27
Wednesday. May 2
} Special arguments.

Queen's Bench.—Crown Paper.

Easter Term, 1849.

Carnarvonshire.—The Queen *v.* The Inhabitants of St. Pancras, (with Bangor).
Essex. — The Queen *v.* The Inhabitants of Hatfield Peveril.
Liverpool.—The Queen *v.* The Mayor, &c. of Liverpool.

Sussex.—The Queen *v.* The Inhabitants of St. Thomas (Winchelsea).
Derbyshire.—The Queen *v.* The Inhabitants of Llanddoget.
Middlesex.—The Queen *v.* The Inhabitants of St. Leonard, Shoreditch.
West Riding of Yorkshire.—The Queen *v.* The Inhabitants of Linthwaite.
West Riding of Yorkshire.—The Queen *v.* The Inhabitants of Silkstone.
Surrey.—The Queen *v.* The Inhabitants of St. Olave, Southwark.
Middlesex.—The Queen *v.* The Inhabitants of St. George, Hanover-square.
Warwickshire.—The Queen *v.* The Inhabitants of Priors Hardwick.
West Riding of Yorkshire.—The Queen *v.* The Inhabitants of Goole.
Middlesex. The Queen *v.* The Inhabitants of Ealing.
Staffordshire.—The Queen *v.* The Inhabitants of Penkridge.
Salop.—The Queen *v.* The Inhabitants of Ellesmere,
Essex.—The Queen *v.* The Inhabitants of Leaden Roothing.
Breconshire.—The Queen *v.* The Inhabitants of Merthyrmaur, (Glamorganshire.)
West Riding of Yorkshire.—The Queen *v.* The Inhabitants of Barnsley.
London.—The Queen *v.* The Baptist Missionary Society.
Lancashire.—The Queen *v.* The Inhabitants of Halliwell.
Middlesex.—The Queen *v.* The Directors of the Poor of St. Pancras.
Middlesex.—The Queen *v.* The Inhabitants of Preston.
Surrey.—The Queen, *v.* The Inhabitants of St. Mary Newington, (with Mountnessing.)
Surrey.—The Queen *v.* Same, (with Widford).
Derbyshire.—The Queen *v.* The Inhabitants of All Saints.
Somersetshire.—The Queen *v.* The Inhabitants of Winsford.
Middlesex.—The Queen *v.* The Inhabitants of Aston, nigh Birmingham.
Wilts.—The Queen *v.* The Inhabitants of Bradford.
East Riding, Yorkshire.—The Queen *v.* The Mayor and Aldermen of Hull.
Cornwall.—The Queen *v.* The Inhabitants of Crowan.
Lincolnshire.—The Queen *v.* John Perkins.
Lancashire.—The Queen *v.* The Inhabitants of Wigan.
Cambridgeshire.—The Queen *v.* The Newmarket Railway Company.
Cornwall.—The Queen *v.* The Inhabitants of Bodmin.
Surrey.—The Queen *v.* The Inhabitants of St. Pancras (with Lambeth.)
Lancashire.—The Queen *v.* The Inhabitants of Wolverhampton.
Surrey.—The Queen *v.* The Commissioners of Woods and Forests.
Lancashire.—The Queen *v.* The Inhabitants of Spotland.
St. Albans.—The Queen *v.* William Thomas.
Lincolnshire.—The Queen *v.* The Inhabitants of Holywell.
Worcestershire.—The Queen *v.* Frs. Wyatt Dyer.
Surrey.—The Queen *v.* London, Brighton, and South Coast Railway Company.
Lancashire.—The Queen *v.* The Inhabitants of Preston (with Roeburndale.)
Lancashire—The Queen *v.* Same (with Elswick.)
Kent.—The Queen *v.* The Inhabitants of Chatham.
Hants.—The Queen *v.* The Inhabitants of Basing.
Norfolk.—The Queen *v.* The Inhabitants of Chedgrave.

NISI PRIUS CAUSE LISTS.

REMANETS FROM HILARY TERM.

Common Pleas.

Middlesex.

J. Duncan	Stead	S. J.	Williams	Ca. Hodgson and B.
Melton	Fearn	S. J.	Countess Waldegrave	Prom. Pearson
Edwards and R.	West Cornwall Railway Company, Inj.	S. J.	Enthoren	Dt. Crowder and Co.
Marten and Co.	Doe d. Mills and ors.	S. J.	Samuda and another	Eject. Tucker and S.
Same	Same	S. J.	Same	Eject. Same [& Co.
Same	Same	S. J.	Pratt and others	Eject. {Symes, Weston, Tucker and S.
Same	Same	S. J.	Samuda and others	Eject. {Tucker and S. L. Rattan
Same	Same	S. J.	Samuda and another	Eject. Tucker and S.
Same	Same	S. J.	Same	Eject. Same
Same	Same	S. J.	Same	Eject. Same
Same	Same	S. J.	Same	Eject. Same
Same	Same	S. J.	Same	Eject. Same
Davies, Son, and C.	Walker	S. J.	Ford	Ca. G. S. Ford
Same	Parker and another	S. J.	Parsey	Cov. A. Haynes
H. W. Vallance	Byrne		Byrne	Sandys and Co.
J. Whitmore	Doe d. Thornhill		Johnston	Eject. Jaquet
R. G. Smith	Weeks	S. J	Webster	Prom. J. Pike
Jaquet	Mills		Salmon	Prom. Swan
Neale	Butcher		Shove	Burn
Bisgood	Neilan		Hanny	Ca. Drew and S.
J. H. Clayton	Hargrave	S. J.	Hargrave	Prom. W. & R. B. Baker
Rosson	Weeks		Bridault	Dt. Warneford

London.

Linklaters	Hutton		Wiles	Trov. Howell
Cotterill	Hembro and another	S. J.	Gurney	Prom. Pearce and Co.
Oliverson and Co.	Grant and others (remanet	S. J.	Norwsy and others	Ca. Fyson and Co.
J. J. Blake	Stansfield and another, assignees	S. J.	Staff	Tro. Holt and Aubin
Cotterill	Hancock and another	S. J.	Newcastle, and Berwick Railway Company	Ca. Williamson and H.
A. Dobie	Adams	S. J.	Peters	Prom. Hughes and Co.
F. J. Manning	Marns	S. J.	Desborough, Sec., &c.	Prom. Browning
Emslie and P.	Connop and another	S. J.	Daniel	Prom. Tyrrell
Oliverson and Co.	Christie, jun. (rem.)	S. J.	Trott and others	Ca. Hughes, K. and M.
Ashurst	Burton and another	S. J.	Wilson and others	Prom. Clark and G.
G. Rutherford	Grissell and another	S. J.	James	Prom. Hook
Miller	Roach and another	S. J.	Grylls and others	Prom. J. & J. H. Linklater
Oliverson and Co.	Barry	S. J.	Hill	Prom. Gregory and Co.
J. and J. H. Linklater	Davis and others		Scholey and another	Dt. Burnell
Phillips and V.	Dixon and others, assignees	S. J.	Stansfield	Detue. Penfold
Oliverson and Co.	Arbuthnott & anor.	S. J.	Sharp	Prom. Gregory, F., & Co.
J. Towne	Cannan and another	S. J.	Pratt	Trov. Hine & R.
J. & J. H. Linklater	Hutton and others	S. J.	Monmouthshire Canal and Rail. Co.	Prom. White and Co.
A. Jones	Inge	S. J.	Austin	Prom. Wing and Ducane
Wire and Child	Smith	S. J.	Hamilton (Treasurer)	Covt. Gosling
Druce and Sons	Dickson	S. J.	Zizinia and another	Prom. Oliverson and Co.
Oliverson and Co.	Barry (commission)	S. J.	Simpson and others	Simpson
Hook	Griffin and another	S. J.	Hope, Esq.	Dt. Rickards and Son
Finch and S.	Williams	S. J.	Maitland	Ca. G. Smith
R. Cole	Loader	S. J.	Gardiner	Prom. Rickards and W.
Gordon and Son	Hillcoat	S. J.	Archbishops of Canterbury and York	Ca. Johnson, Son and W. Hanrott and Son
H. Lloyd	Burton and others	S. J.	Penn	
Hook	Griffin and another	S. J.	Baldwin	Prom. Bickley
R. D. Neale	Francis (a pauper)		Webb	Dt. R. Garry
J. C. Gant	Leighton	S. J.	Lord Ingestre	Prom. Sladen
J. & J. H. Linklater	Whitfield and another, assignees	S. J.	Aland	Ca. Bevor & Co.
Same	Messer	S. J.	Booth	Dt. Browning
Lofty, Potter, and Son.	Stanfield and another, assignees		Lemm	Tro. J. H. Jones
Same	Same		Same	Iss. Same
Thomas	Keene		Woods	Prom. Keightley and Co.
Maltby and Co.	Robinson and others	S. J.	Rosetto and others	Prom. Oliverson and Co.
Young and Hancock	Gaskill	S. J.	Bainbrigge	Dt. Hunt
Sharpe, F. J. and N.	Turner and others, assignees	S. J.	Lyon	Trov. Norris, A. and S.
G. Waller	Sanderson		Keightley	Cov. Beddome and Co.
Vandercorn and Co.	Lysaght	S. J.	Bryant	Prom. Amory, Nelson and
Same	Lysaght and another	S. J.	Same	Prom. Same [Co.
Coe	F. W. Coe		Howard	Stretton
Dimes	Dimes		Wright and another	Dt. A. Beckett and H. G. Smith
Borradaile and D.	Gardner and another		Kleman	Prom. Cox.
Meyrick	Gilkes and others	S. J.	The Newmarket Railway Company	Prom. T. Tyrrell
H. Clarke	Edwards and another, assignees	S. J.	Great Western Railway Company	Ca. Maples and Co.
W. Tucker	Pickett		Batley	Ca. J. A. Jones
C. E. Cutton	Bishop and another		Rea	Dt. Wire & Child
Wilde, R. and Co.	Follett and others		Delaney	Prom. Morgan
Same	Bell, P. O.		Palmer	Prom. W. H. Smith
R. Cole	Loader		Welch	In person
A. Warrand	Snow		Snow	Prom. G. Vincent
Amory and Co.	Cooper		Laurie	Prom. Hutchinson
J. and W. Sheffield	Hamborg		Humphreys	Prom. Young and Son
H. Lloyd	Barnett and another, assignees, &c.	S. J.	Reading	Prom. J. Wells
Rickards and W.	Webster	S. J.	Webster	Gregson and K.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 28, 1849.

———"Quod magis ad NOS
Pertinet, et nescire malum est, agitamus."
HORAT.

THE PRESENT SYSTEM OF LAW REPORTING.

PERHAPS no topic could be suggested upon which less difference of opinion prevails amongst the members of the legal profession than with respect to the existing system of law reporting. It is regarded with unqualified and unanimous dissatisfaction. We rejoice to find, therefore, that it forms the subject of an able and elaborate Report of a Special Committee, appointed by the Law Amendment Society. A portion of that Report was printed in our last number, (*ante*, p. 489,) and the conclusion will be found in a subsequent page.

The evils arising from the multiplication of reported cases, in which no principle of law or equity, and no rule of practice, can be fairly said to be expounded or illustrated, are, perhaps, too lightly passed over in the document alluded to; but attention is forcibly drawn to the objects with which fresh series of reports are constantly sought to be established, a knowledge of which goes far to account for the quantity as well as the quality of the reports with which the profession is inundated. If published decisions on any particular branch of the law are likely to find a sufficient number of purchasers to pay the expenses of paper and printing, barristers can readily be found, with such abundant leisure as to enable them to undertake the task of reporting for a very moderate pecuniary consideration, in addition to the notoriety arising from the public announcement of their names in connection with the proposed undertaking.

As the amount of compensation is almost uniformly regulated by the quantity of printed matter, the prolixity of reports is at once explained, and the competition arising from the presence of several rival reporters in the various courts, whilst it operates as an inducement to augment the number of reported cases, has no influence in rendering the reports more concise or useful. As any one may learn who tries the experiment, it is far more difficult and laborious to make an intelligible and correct abridgment of arguments, pleadings, or judgments, than to report them at length and in detail. The principle upon which law reporters are for the most part compensated, however, discourages short reports. They are paid by the sheet, and cannot afford to abridge. Hence, those who subscribe to the reports, are compelled to pay for many bushels of chaff, in order to obtain a few grains of wheat!

In order to effect a practical reform of the system, it is necessary that more care should be bestowed in the selection of reporters as well as cases. It is a great mistake to suppose that every barrister is, *ipso facto*, capable of becoming a competent reporter. Assuming an adequate amount of learning and diligence, other qualifications are necessary. A ready and accurate conception and application of what passes in Court,—the power of analysing and epitomising,—and a manual facility of taking legible notes, are all indispensable qualifica-

tions essential to the creation of a competent law reporter.

It would ill become us to deny, and is indeed quite true, as stated in the Report of the Law Amendment Society, that many of the gentlemen who undertake what are called, the "Regular Reports," as well as those who report for the legal periodicals, are persons "of considerable skill and legal acquirements." It is equally true, however, that gentlemen are often selected for the office of reporters, who have no previous experience or acquaintance with the business, and are selected merely because they are friends or relations of some one whose position enables him to influence the appointment.

As a remedy for the evils so loudly complained of, and so generally admitted as arising out of the present system of law reporting, the Committee of the Law Amendment Society suggests, that the Profession should have a direct control over the publication of reports, and that official reporters should be appointed. How such a system would work practically, is of course in a great degree matter of speculation? Where so much must necessarily be left to the discretion of the reporter, the danger would be, that much would be left undone that ought to be done, and that the stipend annexed to the office would be earned with the least possible labour on the part of the official.

It is very possible, however, that means may be suggested, and inducements held out, which would secure an adequate performance of the duties devolving upon those who undertake to perform the task. At all events, the subject is well deserving of consideration, and the practical and temperate spirit in which it is discussed in the document before us, entitles it to the attention of the profession, and justifies the hope that an improved system may be speedily adopted.

REPORT OF THE SPECIAL COMMITTEE OF THE LAW AMENDMENT SOCIETY.

The Committee observe, that "the competition of the reporting system is carried on without regard to the interests of the profession or public. The gentlemen who undertake these reports are often highly competent men; indeed, many of them have been raised to the Bench of Westminster Hall. Independent of the profit of reporting, it is a good channel to professional notoriety; but here is one great evil of the system. If the reporter has other professional engagements, he loses his anxiety about his reports, he throws up his office when he pleases (and cannot be blamed for this), and it has been held that the bookseller cannot compel him to perform it. Thus we have chasms in our law reports, which will occur readily to any professional reader, and which can never be supplied. It is well known that an eminent counsel (formerly a reporter) practising at the Chancery Bar, has at the present moment notes of the decisions of a deceased Lord Chancellor, taken by the learned counsel in his character of reporter, but to this time unknown as law to all the profession save the parties engaged in these causes. In the preface to a work recently published by a late Lord Chancellor of Ireland,[1] it is observed, 'whilst at the bar, the author retained all the printed cases on appeals in which he was counsel, with his own notes and the notes of the argument. From this source, principally, he has been enabled to add the cases not at present reported between 1821 and 1826.'"

Thus, (say the Committee) under the present system of reporting, the law expounded in Westminster Hall may not only remain for years concealed from the public, but the professed reporter himself, or the counsel in the case, may alone be in possession of the decisions, at the risk of their being used at any moment to contradict the law as universally received amongst the profession.

"This inconvenience is thus alluded to in the preface to Watkins' *Principles of Conveyancing*:—'Supposing that a person should be so fortunate as to be able to extract something comprehensible out of printed contradictions, yet other contradictions may make their appearance in manuscript, and, overthrowing all his hard-earned knowledge, remind him once again *of the glorious uncertainty of the law*. Is the law of England to depend upon the private notes of an individual, and to which an individual can only have access? Is a judge to say, 'Lo! I have the law of England on this point in my pocket: there is a note of the case which contains an exact statement of the whole facts, and the decision of my Lord A. or my Lord B. upon them. He was a great, a very great man; I am bound by his decision: all you have been reading was erroneous. The printed books are inaccurate;—I cannot go into principle. The point is settled by this case?' Under such circumstances, who is to know when he is right or when he is wrong? If conclusions from unquestionable principles are to be overthrown in the last stage of a suit by private *memoranda*, who can hope to become acquainted with the laws of England?—and who that retains any portion of rationality would waste his time and his talents in so fruitless an attempt? Is a paper evidencing the law of England to be buttoned up in the side pocket of a judge, or to serve for a mouse to sit upon in the dusky corner of a private library? If the law of England is to be de-

[1] Sugden's Law of Property, preface, p. 4.

duced from adjudged cases, let the reports of those adjudged cases be *certain, known, and authenticated.*'"

The inconvenience arising from the sudden retiring of law reporters has been already noticed; the present system, however, enables, and indeed induces, the publisher of a series of Reports, on finding them at any time not sufficiently remunerative, to stop the supply, and leave the notes already collected to serve the purpose which is thus reprehended; and hence the cause of those long intervals in the reports of some of the Courts.

"The reporter, however, under the present system may unavoidably be absent, or purposely omit cases which he deems not to be authorities; and we have heard of an eminent Nisi Prius reporter preserving in MSS. a whole pile of decisions of a late Chief Justice which he deemed *bad law*.

"The evils, too, arising from the *inaccuracy* of some of the existing reports are often practically felt by the profession. In an article on this subject in the *Law Review* of February, 1848, a long list of instances (taken from the then last numbers of the several Reports) is given, where cases solemnly cited and relied on in argument, were denounced as *incorrectly, inaccurately*, or *falsely* reported; and it is a common thing to hear of a particular report or set of Reports, that they are *not of much authority*. Hence the suitor, even after he has discovered what the law is reported to be, may find to his cost that such report, however authentic in appearance, is inaccurate.

"It is but little consolation to say, on the trial of a cause, 'That case is not law,' after it has misled half the kingdom."[k]

The Committee do not wish to say anything in this place as to the present style of law reporting; still it will hardly be denied, that with few exceptions the volumes of Reports are commonly too verbose, and too open to the reproach of *book-making*.

"In a useful article on Law Reports in a recent number of the *Law Magazine*,[l] a reform of the existing style of law reporting is warmly advocated. 'Instead of a collection of judicial decisions,' it is observed, 'with the facts necessary to support them, and the grounds upon which they are made, carefully and briefly set out, we have volumes upon volumes of reported cases, in which the points important to be known bear but a small proportion to the mass of useless undigested matter with which these volumes are filled. The inconveniences of such a system are evident: instead of having to read through a few pages, and at once obtaining a clear comprehension of a particular point, we have to wade through an enormous quantity of matter, which, so far from throwing additional light upon the subject, confuses by the numerous doubts and difficulties by which each case is surrounded; the consequence is, we do not obtain that certainty in the law which it should be the object of reports to accomplish.'"

The Committee thus sum up the evils and inconveniences of the existing system of law reporting: there is no guarantee afforded to the public, that the judicial exposition of the law will be reported at all—or reported correctly—or in time to prevent mistakes—or in such a manner, with respect to conciseness, form, and price, as to be accessible to those whom it so vitally affects.

"Whilst these various evils of the present system have forced themselves upon the attention of your Committee, they have been much struck by the fact, that the present voluntary outlay of labour, skill, and money, on the part of the legal profession in the shape of law reports, are amply sufficient to secure, under a systematic direction, all that could be desired in the shape of an authentic series of reports to be produced regularly, expeditiously, and cheaply.

"There are at this moment upwards of forty barristers of acknowledged skill constantly employed in the preparation of what are deemed the *regular reports* of the decisions in the Courts of Westminster Hall, the House of Lords, &c.,[m] and it is believed there are an equal number of members of the Bar occupied in reporting for the various weekly *legal periodicals*, &c., or occasionally assisting the class first alluded to; and among these additional reporters are many of considerable skill and legal acquirements.

"The present expense of a complete set of the reports for the current year—exclusive of the ephemeral publications, the reports of the Courts at Doctors' Commons, and the various classified reports enumerated before, as magistrates' cases, railway cases, election cases, &c.—amounts to the sum of 30*l.*; and estimating the present average circulation of these books at 750, it is obvious that the annual outlay to the profession, in purchasing them, amounts to about 22,500*l.*; and if to this sum be added also the outlay of the profession in the reports of less circulation, as the Courts at Doctors' Commons, Irish reports, election reports, magistrates' cases, &c., and the weekly periodicals, it is plain that the expense comes to many thousands more. It would seem that not more than 9,000*l.* is paid to the reporters themselves, and the remainder is carried to the account of the expenses of printing and the profits of the publishers and booksellers."

[k] Preface to Watkins' Conveyancing, p. 21, note 10.

[l] No. 16, N. S., art. 1, p. 1, Aug., 1848.

[m] Viz., the three series of Common Law Reports; the Law Journal; the Chancery Reports; the House of Lords Reports; the Nisi Prius Reports; and the Practice Reports.

It is next remarked by the Committee, that the high price of law books has for years been a common subject of complaint; and when it is considered what a small proportion of this price goes into the pocket of the author or compiler, it is remarkable that the profession, who are at once the producers and consumers, should have never yet attempted a remedy.

"The commission allowances, &c., to the *trade* on the sale of books generally amount to between 30 and 40 per cent., and sometimes even more, on the cost of a book.[n] Thus on a book of law reports, on which the smallest allowance is made, if the money is to be accounted for to the author, first of all 20 per cent. on 2*l.*, its nominal price, is allowed to the retail bookseller; 5 per cent. more, and one copy in twenty-five, in all 9 per cent., or 3*s.* 8*d.*, to the wholesale bookseller; and 7½ per cent. at least, or 3*s.*, by way of commission to printing and advertisement expenses and the publisher; only 1*l.* 5*s.* 4*d.* being left for the remuneration of the author. Hence it obviously requires a sale of 400 copies of such a work to save the proprietors of the copyright from positive loss; and the publishers, relying on this, generally succeed in getting the copyrights of the reports into their own hands.

"If in any case a society for the purpose of publishing books were practicable, it would seem most peculiarly so among the legal profession.

"The 'Law List' of the present year contains the names of about 14,000 practising barristers, attorneys, and solicitors, and this list would would be vastly increased by an addition of the local and colonial judges, magistrates, and law officers, and the crowd of students, articled clerks, &c., preparing themselves for the profession.

"To the majority of this numerous class the serious expense of the Law Reports in their present shape is the principal objection which prevents their being used.

"Now, if instead of the limited average circulation on which the above calculations are formed, the reports were generally circulated amongst the profession—the majority of them, say, for the sake of round numbers, 10,000—annually contributing to a fund for the purpose a sum less than it may be assumed they have at present annually to lay out, it is pretty clear that, instead of 30*l.*, the small annual sum of *three pounds* would be amply sufficient to secure to each of the contributors a supply of all the reports even in their present form: a fact which may be easily rendered intelligible.

"The printing and binding of 1000 copies of an ordinary octavo volume of Law Reports, of even 800 pages, costs about 330*l.*, and every additional 1000 copies about 160*l.*; and thus 10,000 copies of such a work can be produced for about 1760*l.*: and if the expenses of ten series of reports, at this rate, be added to the sum already estimated as the amount of the reporters' present remuneration, it will be found that the whole expense of a set of reports for each Court, as voluminous as they are at present, would leave a large surplus from the amount of the small annual contribution suggested.

"By a recent regulation in the House of Lords, in accordance with the practice in France and the United States of America, law reporters are, at this day, officially appointed. In the American Courts, the reporters, both in salary and rank, come next after the Attorney-General of the State.

"The general restoration of the old system of official reporters in our Courts has been often advocated. Our Law Reports would thus be stamped with some degree of authority, and the unseemly competition in the avocation of *book-making*, which the present system engenders, would be got rid of. However this may be, it seems to your committee, that were any plan actually in force,—the profession having the direct control over the publication of the Reports, many other advantages than mere economy would be gained. The division of labour between the reporters, when so large a number as that which we have assumed are employed—and the system and regularity which this would create—would go far to put an end to many of the evils which at present exist in law reporting. The quality and not the quantity of the material would be more studied; and the omission of a really important decision would be deemed as serious a neglect in the reporter as an inaccurate report of it."

[n] Mr. Babbage, in his "Economy of Manufactures," estimates the share of profits derived by the trade from books sold on an author's own account as fifty-four per cent. (p. 261). A less allowance, however, is usual in the law book trade. This allowance we believe to be as follows:—To the retail dealer 20 per cent. on reports and 25 on other books; to the wholesale bookseller 5 per cent. more, and also 1 copy in 25, or 9 per cent.; and to the publisher between 7½ and 10 per cent. for commission. The principal law publishers have very recently entered into an arrangement to refuse allowing any booksellers besides themselves more than 10 per cent. on retail sales; but it by no means follows that this deduction is discontinued. In the authors' accounts all sales are still credited as made to the principal law booksellers, and at the wholesale trade prices.

THE REGISTRATION AND TRANSFER OF PROPERTY BILL.

This Bill, which bears the name of "The Transfer of Real Property Bill," is also designed, and that principally, to *Register Title Deeds* to real property at the option of the owners.

It proposes to alter the present mode of

conveying real property by substituting an *entry on the register* in lieu of a deed or other instrument of conveyance.

And further, to give persons in possession of real property for 30 years, an absolute title by advertising in the *London Gazette*, and (no cause being shown) registering themselves as owners.

The Bill remains in the Select Committee to which it was referred, and we are assured that nothing will be done with it, until the Commissioners have made their report. In the mean time, however, the Manchester Law Association have presented a petition through the medium of the Solicitor-General, signed by 121 members of the society. The petitioners admit,

"That the adoption in this country of a well-constructed system of *local* registration of titles to real property with provisions adapted to ensure its certain and uniform operation,—the authenticity of the matters recorded in the registries, and the means of ready access and convenient reference to their contents,—would be of great public benefit, and would, more than any other measure which has been devised, tend to give security to titles, and to facilitate the transfer of real property.

"But in proportion as they estimate highly the advantages of an efficient plan of registration, they earnestly deprecate the adoption of any crude and imperfect plan, which would not only in itself be a serious evil, but would greatly impede the subsequent establishment of a better system.

"They urge that the registration proposed by the bill, being *optional* only, would produce uncertainty and confusion, and considerable and needless expense in searches for possible entries in relation to property which might not in fact have been registered."

The objections to the plan of a *Metropolitan* Registry proposed by the bill are then stated :—

"That the establishment of one general registry office only would be highly inexpedient and injurious, tending in great measure to deprive those parts of the kingdom which are remote from the locality of the office of the benefit of registration, by increasing the expense of reference to the registry,—by occasioning unnecessary delay, and the risk of loss of documents,—and by increasing the difficulty of searches and chances of omission or mistake consequent on the immense accumulation of records in a single office.

"That such plan would be unequal and unjust in its operation, imposing on the inhabitants of districts remote from the registry office, a much greater burden of expense and delay than on those resident in the neighbourhood thereof, and creating an onerous and disproportionable tax on the transfer of small properties in such remote districts; objections which would render registration an evil instead of an advantage to the inhabitants of by far the greater part of the kingdom, independently of the impolicy of centralizing the evidence of titles in one locality, and thereby subjecting the ownership of the whole of the real property of the kingdom to the possible accidents of popular tumult in the locality of the registry office."

The following are the objections stated by the petitioners to the mode of registration proposed in the bill.

"It would be deficient in *authenticity;* as, for instance, parties would be enabled not only to register documents, but in the absence or pretended absence of such, to register their own statements of their alleged titles without any conditions being imposed for the verification of such statements, and it is proposed to authorize alterations to be made by the registrar in maps, schedules, and books of reference, of lands registered on the application of an owner or incumbrancer, without means being afforded to other parties concerned to contest such alteration.

"The *access to the registry*, instead of being made open, is proposed in effect to be subjected to the discretion of the registrar, except under authority of an order of Court; whilst it is left uncertain whether any or what Court is empowered by the bill to make any such order.

"No adequate means of reference to guide or *facilitate searches* in relation to particular titles or transactions are provided; and the forms of registry proposed by the bill are obscure and imperfect, and their use, omission, or alteration are made dependent on the registrar, to whom, indeed, almost all the details of the registry (on the careful construction of which the value of registration mainly depends), are proposed to be committed, (subject to the approbation of the Commissioners of her Majesty's Treasury,) instead of being prescribed by the bill itself."

The proposed mode of transfer of real property by an *entry or acknowledgment of transfer*, signed by the transferor *in the books* of the registry, is unsuited to the existing system of English law in relation to such property, and inconsistent with the complicated interests therein which exist, and are continually being created and transferred.

"The transfer of real property by any such summary entries as proposed can only effectually apply to simple cases, in which a mere change of ownership is the object to be effected, without any, or with but very simple, limitations, declarations of trusts, or other provisions in connection therewith.

"The last stated objection cannot be avoided by expressing such connected matters in a separate instrument, as such instrument, if registered, would in effect be part of the transfer,

and if unregistered, would to a great extent defeat the objects of registration; and numerous questions would be introduced in Courts of Equity between parties claiming under the transfers on the registry on the one hand, and the unregistered limitations and declarations on the other."

There are also several other objections to the plan stated in the petition, viz. :—

"That the proposed mode of transfer being *optional*, the forms of conveyance would be multiplied, and the transfers of and titles to real property made more complicated and uncertain.

"That no provision is contained in the bill for charging transfers by entry in the registry books with any stamp duty.

"That the proposed enactment for enabling parties after a possession of 30 years to register themselves as absolute owners, would give occasion to the utmost fraud and injustice, as no adequate means of information are afforded to others whose titles or interests might be effected thereby, nor are any means provided by which parties so affected, and having notice of the intended registration, might oppose the same, nor is any other protection afforded to parties under disabilities."

OBSERVATIONS ON THE COPYHOLD BILL.

THIS measure, though having the title of a bill to effect compulsory *Enfranchisement*, does not authorize any such enfranchisement, but only extends to *Commutations*; and with one important exception, is almost a reprint of 31 of the 42 sections in the last bill introduced by the Lord Chancellor.

The parts of the last bill omitted, are those which authorized a compulsory commutation at the request of the Lord, after a commutation of two-thirds in value of the copyholds; and those which authorized a general enfranchisement in a manor, after a meeting and consent by a specified proportion in number and interest of the lords and tenants.

The important difference between the last bill and the present, is that whilst under each bill the power to enforce commutation is given to the tenant only, the last bill subjected the Lord to pay half the expense of commutation, though effected contrary to his wish; the present bill more justly subjects the tenant who enforces a commutation, to the payment of the whole expense. This alteration renders the present bill free from the objection which was applicable to the last bill.

The present bill, if passed, will effect the following alterations in the law: First, Any copyholder who may desire to have his present uncertain payments for fines, heriots, &c., changed for certain payments, will be able to do so, at a small expense, through the Commissioners. Secondly, After commutation, the difficulties now existing from liability for waste, and the necessity for licenses to demise, will cease. Thirdly, Commutation-fines and rent-charges, and enfranchisement rent-charges, may be fixed in money, instead of being variable according to the price of corn; and, Fourthly, Provision is made for fixing the steward's fees, and for the taxation of bills of fees.

Although the parts of the bill deemed most important by the introducer, are those which authorize the tenant to ENFORCE commutation; yet in practice the most valuable alteration will probably be, that which authorizes the fixing commutation-fines and rents in *money*, in lieu of payments, variable according to the price of corn, as required by the previous acts; a restriction which has rendered those acts almost inoperative. The probable consequences of such a restriction were over and over again pointed out to the Commissioners, but without success.

The provisions with respect to stewards' fees, will, if efficiently carried into operation, be of very great value, as hitherto the want of a fixed scale of fees has been regretted by stewards desirous to charge the tenants fairly, and taken advantage of by rapacious stewards to the injury of the copyholders.

R. R.

CONSTRUCTION OF THE RECOVERY OF TENEMENTS ACT.

To the Editor of the Legal Observer.

SIR,—I beg to call the attention of your readers to an Act of Parliament, the proper construction of which appears to me rather obscure. The act I refer to is, the 1 & 2 Vict. c. 74, intituled "An Act to facilitate the recovery of tenements after due determination of the tenancy." The part of the act to which I shall particularly call the attention of your readers, has been made a precedent for the 122 sec. of the Small Debts Act, and will consequently be much acted upon. The act referred to, gives power to the landlord to cause the tenant refusing to quit and deliver up possession, to be served with a notice, in the form set forth in the schedule to the act, of the landlord's intention to proceed under the act, and if the tenant does not show reasonable cause to the satisfaction of the justices why possession should not be given; then after proof of the holding, the determination of the tenancy, &c. it shall be lawful for the justices acting for the district, division, or place, within which the

said premises, or any part thereof, shall be situate in petty session assembled, or any two of them, to issue a warrant under their hands and seals to the constables and peace officers of the district, division, or place within which the said premises or any part thereof shall be situate, *commanding them within a period to be therein named, not less than* 21, *nor more than* 30 *clear days from the date of such warrant, to enter by force* (*if needful,*) *into the premises and give possession of the same to such landlord.*

I refer to the latter part of the clause which may be construed in two ways.

It may be contended, that the constable under the warrant may enter and take possession on any day within the date of the warrant, and a day mentioned in the warrant, which day so mentioned in the warrant, must be not less than 21, nor more than 30 clear days from the date of the warrant, and that this is the period referred to in the act; for instance, if the constable be commanded to enter and deliver up possession within 22 days, or 23 days, from the date of the warrant, it is not compulsory upon him to wait the expiration of the 21 days.

It may also be contended, that the constable cannot lawfully enter and take possession until after the expiration of 21 days from the date of the warrant, and that he must do so within that time and 30 days from the date of the warrant, the period between the 21 days, and 30 days being the only time within which the warrant can be executed.

I must refer you to the act and its schedule, in which is given a form of the warrant. Which is the proper construction?

INQUIRO.

ADMISSION OF SOLICITORS IN CHANCERY.

Secretary's Office, Rolls, April 18, 1849.

THE Master of the Rolls has appointed *Monday*, May 7th, at the Rolls Court, Chancery Lane, at three in the afternoon, for swearing Solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission, or his Certificate of Practice for the current year, at the Secretary's Office, Rolls Yard, Chancery Lane, on or before *Saturday*, 5th May.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From March 27th, to April 20th, 1849, both inclusive, with dates when gazetted.

Cannon, William Jeary, and William Pulsford Browne, Cambridge, Solicitors and Attorneys. March 27.

Fry, Peter Wickens, John Loxley, and Peter Samuel Fry, 80, Cheapside, Solicitors. March 27.

Gatty, Robert, and Thomas Almond Garth, 3, Angel Court, Throgmorton Street, Solicitors. March 30.

Manby, William, and John Hawksford, Wolverhampton, Attorneys and Solicitors. April 13.

Richardson, John, and Joseph Richardson, Burton-on-Trent, Attorneys and Solicitors. April 13.

MASTERS EXTRAORDINARY IN CHANCERY.

From March 27th, to April 20th, 1849, both inclusive, with dates when gazetted.

Atkinson, Anthony, Beverley. April 17.

Austen, George Durrant, Tunbridge Wells. April 20.

Frost, Horace, Hull. April 3.

Hays, William Stephens, Cheltenham. March 27.

Hinde, William, Cleobury Mortimer. April 3.

Sketchley, Samuel, Horncastle. April 17.

RECENT DECISIONS IN THE SUPERIOR COURTS AND SHORT NOTES OF CASES.

Lord Chancellor.

Exparte Spackman, In re the Agriculturist Cattle Insurance Company. April 4, 16, 19, 1849.

JOINT-STOCK COMPANIES' WINDING-UP ACT, 1848.

Held, (*affirming the decree of the Vice-Chancellor Knight Bruce,*) *that the insolvency of a joint-stock cattle insurance company was not proved by showing a loss on the premiums in consequence of the average being too low and the excess of future liabilities over the present capital, as the former might be altered, and the latter could not be considered, the liability being remote and the premiums on the policies forming a fund to meet the policies when due.*

THIS was a petition presented by George and Joseph Spackman, by way of appeal from the Vice-Chancellor Knight Bruce, that the company might be absolutely dissolved and wound up, under the 11 & 12 Vict. c. 45. The primary objects of the company, which was projected in 1845, were to effect insurances against loss by mortality in all kinds of animals, being property belonging to farmers, keepers of exhibitions of animals, and others, which might be kept for the purpose of pleasure or profit, whether such mortality should be occasioned

by death, without apparent cause, or by slaughter, in consequence of taint or infection from any contagious disease, or of which the animals should die; or be slaughtered with the consent of the company's servants duly authorised, in consequence of disease or accident, or other just cause.

The *Solicitor-General*, *Collins*, and *Fitzherbert* for the appellants; *J. Russell* and *Prior* for the respondents.

The *Lord Chancellor* said that the question was, first, whether this company came within the operation of the 11 & 12 Vict. c. 45, and if so, whether the insolvency of the company had been so made out as to justify the interference of the Court. The purposes for which the company was formed were of such a nature as rendered the ascertaining of the average duration of the lives of cattle very difficult, and the more so, since this was the first company established for such an object. The average, it appeared, had been fixed too low, and a loss had occurred in consequence. The loss had been set forth in the petition, together with the capital, the sums owing, and future liabilities for outstanding insurances; but the liabilities, in respect of insurances that had not fallen in, ought not to be taken into consideration upon the question of the company's insolvency; for the time when such liabilities would be payable was uncertain, and might be very remote, and because the company in the meantime would be in the receipt of the premiums on the policies creating the liabilities. Nor was it unreasonable to assume that these premiums would form a sufficient fund to meet the liabilities as they accrued, but at any rate the excess of *future* liabilities over the *present* capital, was no ground to presume the company was insolvent. Taking it for granted that the company came within the act, the question was, whether the facts disclosed in the petition and affidavits justified the interference of the Court. It was urged that it was impossible to carry on the company much longer, and that the directors had commenced winding-up the concern. It appeared that they had made calls, and that some shareholders had intimated their wish to retire. The directors therefore proposed that any of them might, upon paying a sum in proportion to the number of their shares, be at liberty to retire. Some accepted this offer, and the remainder by continuing shareholders showed their willingness to carry on the speculation, but this arrangement did not show the company was insolvent. As to the object that the company could not succeed in consequence of the rates of premiums being too low,—the remaining members might alter them, and the objection would then fall to the ground. No such case, therefore, had been made out respecting the insolvency of the company as would justify an order of the Court for its winding-up; and the order of the Court below would be affirmed.

April 19.—*Stewart* v. *Forbes*—Appeal dismissed with costs.

April 19.—*Long* v. *Storie*—Bill dismissed with costs.

— 20.—*In re Dyce Sombre*—Supersedeas of lunacy commission refused.

— 19, 21.—*Fitch* v. *Rochfort*—Order of Vice-Chancellor of England granting injunction to restrain sale by pawnbroker of pledges discharged—Plaintiff to pay the costs in the Court below of obtaining it.

— 21.—*Penny* v. *Watts*—Appeal from the Vice-Chancellor Knight Bruce allowed.

— 21.—*In re Mallorie*—Order for commission to inquire into lunacy.

— 25.—*In re Direct Manchester Railway*—Order for dissolution under 11 & 12 Vict. c. 45.

— 25.—*In re Anstey*—Petition of Mr. Bailey for carriage of commission in lunacy granted—That of the other side dismissed with costs.

Rolls Court.

Attorney-General v. *Pilgrim and others*. March 10, 12, 1849.

VOID LEASE OF CHARITY ESTATES.

A lease of charity estate for 1000 *years was declared void, and an account of rents directed to be taken.*

THIS was an information filed by the Attorney-General, for the purpose of setting aside a lease, dated the 19th May, 1699, of some charity land, situate in the parish of St. Saviour, Norwich, which belonged to that of St. Andrew, in the same city. It appeared that Robert Davy by his will, dated 21st September, 1521, devised the land in question to his wife for life, and at her death to be sold, and the proceeds to go to the church of St. Andrew, to a tabernacle to be made within the church, and the residue to the same church upon the testator's death: his widow proved the will, and afterwards having married, made her will in October, 1550, and bequeathed some money for the repair of the church, and then directed the land should be sold and the proceeds applied as the testator had directed. The executors proved the will, but instead of selling, retained the property, and the churchwardens and inhabitants of St. Andrew's undertook the management of the lands, and let the same, receiving the rents thereof. A lease had been granted (with the consent of the other parishioners) by the trustees of these charity estates to John Copping for 1000 years, at the yearly rent of 10*l.*, which was to be employed for the uses created under the will of the original testator. The lessee was also to expend 200*l.* in building a house or houses within four years, and was to keep the same in repair. They were therefore erected and the rents duly paid to the churchwardens. It appeared the property was much increased in value, and was now vested in the defendant and the churchwardens of St. Andrew's.

Turner and *Rogers* for the plaintiff; *Roupell* and *Elmsley* for the defendants.

The *Master of the Rolls* said, that the lease could not be supported, and it must, therefore, be set aside with costs, to be paid by the de-

fendants, and a reference was directed to the Master for an account since 1845.

April 19.—*Lord Suffield* v. *Whalley*—Demurrer for want of equity overruled.

— 19.—*Leith* v. *Bishop of London*—Order confirming report discharged—Reference back to review report.

— 21.—*Smith* v. *Earl of Effingham and others*—Bill dismissed with costs against all the defendants.

— 21.—*Attorney-General* v. *Bedingfield*—Charity scheme confirmed.

— 25.—*Attorney-General* v. *Stevens and others*—Judgment as to whom the rents and profits of charity were vested in—Reference to Master to approve of a scheme.

Vice-Chancellor of England.

May v. *Skey*. April 21, 1849.

HUSBAND AND WIFE.—MONEY LENT.—JURISDICTION.

Held, *that letters and a power of attorney from a husband did not constitute such a lien for money supplied to the wife being not for necessaries, nor to pay creditors, as to give a Court of Equity jurisdiction to interfere; and a demurrer for want of equity to a bill to recover such money was allowed.*

THIS bill was filed to recover a sum of 400*l.* lent to the wife of the defendant, who was absent in Tahiti. It appeared that the defendant had become entitled to an estate which had sold for upwards of 4,000*l.*, and had written several times to his wife expressing his affection and fearing lest she should want the means of support. He had therefore requested his brother to give her the money she wanted, and likewise gave a power of attorney to one Dunnett, empowering him to receive the rents and give his wife 200*l.* This power was not acted upon, the tenants having refused to pay the rents to Dunnett, on the ground that the defendant might be dead. The plaintiff, thereupon, lent 400*l.* at different times and in various sums, but as the wife had not incurred the debt for necessaries, the plaintiff could not recover at law. She therefore filed this bill, relying on the letters and power of attorney on the faith of which she alleged the money was lent.

Bacon and *Bilton* in support of a demurrer for want of equity; *Bethell* and *Wilcock* in support of the bill, citing *Earle* v. *Peale*, 1 Salk. 387; *Darby* v. *Boucher*, 1 Salk. 279; and *Harris* v. *Lee*, 1 P. Wms. 482.

The *Vice-Chancellor* said, that the question was not whether there was a debt, but whether the Court had jurisdiction to interfere. The cases cited at bar were advances for payment of debts, and the Court had only to consider whether the persons were creditors, and, in interfering to execute the trust, acquired jurisdiction. The plaintiff, however, as a mere creditor of the husband, had no equity against him as possessing a lien, for the power of attorney and letters did not constitute a lien, and the Court had therefore no jurisdiction to interfere. The demurrer must be allowed.

April 19.—*Smith* v. *Pincombe*—*Cur. ad. vult.*

— 23.—*Peto* v. *Peto*—Bill dismissed.

— 24.—*Attorney-General* v. *Wilshere*—*Wilshere* v. *Harwood*—Judgment on construction of will.

— 24.—*Yates* v. *Maddan*—Judgment on construction of will.

— 24.—*Reade* v. *Rowitt*—Order to compel vendor of ship to deliver up certificate of registration.

— 25.—*Hirst* v. *Tolson*—Reference to the Master to ascertain how much of the premium paid for apprentice whose master since died should be restored—Defendant to pay costs.

Vice-Chancellor Knight Bruce.

Stutely v. *Harrison*. April 19, 1849.

PRACTICE.—INFANT.—GUARDIAN AD LITEM.

On an affidavit verifying the birth of an infant, and that it would be prejudicial to remove it, the Court will appoint a guardian ad litem *without seeing the child.*

THIS was an application for the appointment of a guardian *ad litem* to certain children who were parties to the suit. It appeared that one of them was only born on the 31st March, and was consequently not present.

Giffard in support of the application.

The *Vice-Chancellor* said, that upon an affidavit being produced showing that the infant was born on the day alleged, and that it would be injurious to remove it, he would appoint a guardian *ad litem*, notwithstanding its absence.

April 19.—*Smith* v. *North*—Order for renouncing executor to pay over the amount retained by him in discharge of a debt from the testator.

— 19.—*Hook* v. *Sankey*—Inquiry directed as to sums received by defendants in respect of bills of costs, as local solicitors or agents, and what part had been profit.

— 19.—*Davall* v. *New River Company*—Reference as to who was heir of trustee under a will.

— 20.—*Gude* v. *Worthington*—Plaintiff held entitled to whole fund.

— 23.—*Hayward* v. *Pursey*—Issue directed to court of law.

— 24.—*Heywood* v. *Grazebrook*—Part heard.

Vice-Chancellor Wigram.

Lucas v. *James*. Feb. 27, March 1, 2, April 18, 1849.

PRINCIPAL AND AGENT.

Where the clerk of a house agent signed a qualified agreement for a lease of a house but there was no evidence of his authority, the Court will not enforce it.

THIS suit was instituted for the specific performance of an alleged agreement made in September, 1847, by which the defendant agreed to lease a house in Curzon Street,

Mayfair, for a term of 21 years, at 180*l.* a-year. It appeared that the agreement was entered into with the house-agent appointed to let the property, and was in these words:—"I agree to these terms, subject to the above observation." This was written in pencil and signed. The observation referred to, and which was also written in pencil, was the following:—"I have no objection to this agreement, supposing there is nothing unusual in Sir Richard Sutton's lease." For the defendant, it was contended that the signature being affixed in pencil, the agreement could only be considered as deliberative, and conditional on the original lease containing no provisions of an unusual character, and that such lease did contain such provisions, and in particular a proviso of re-entry on non-payment of rent, whether it were demanded or not.

Wood and *Glasse* for the plaintiff; *Solicitor-General*, *Lloyd*, and *Elmsley* for the defendant.

The *Vice-Chancellor*, after stating the agreement entered into with the clerk of the house-agent, said that the plaintiff had not proved that such clerk was authorized to make this qualified agreement. The plaintiff might, therefore, after it was so signed by the defendant, have refused to fulfil it; and, as this was the case, neither could the defendant be held to be bound by the agreement. The agreement must, therefore, be treated as a proposal, and as it was not followed up by any contract, it could not be enforced.

The other points it was unnecessary to decide.

April 19.—*Lewis* v. *Marsh*—Order to have access to plaintiffs' coal mines by passing through the defendants' coal-works to ascertain the weight of coal the defendants had worked therefrom.

— 20.—*Labouchere* v. *Clarkson*—Next of kin held individually liable for such sums only as each had received, with interest.

— 21.—*Fussell* v. *Elwin*—Judgment on construction of 32nd order of August 1841, that where a party to a bill becomes bankrupt, the assignees must be made parties.

— 21.—*Corbyn* v. *Attorney-General*—Order for payment without reference to the Master as to identity of charity.

— 23.—*Lewis* v. *Burnie*—*Cur. ad. vult.*

— 24.—*Kirwan* v. *Daniel*—Decree refused on the ground that the owner of estate being out of the jurisdiction might resist payment or allowance.

— 24.—*Reynell* v. *Sprye*—Part heard.

Queen's Bench.

(Coram Patteson and Erle, JJ.)

***Colombine* v. *Penhall and another*.** April 19, 1849.

COMPETENCY OF CREDITOR AS WITNESS.—CONSTRUCTION OF LORD DENMAN'S ACT.

In an action by a bankrupt against his assignees to try the validity of the fiat issued against him, in order to prove that the plaintiff was a money scrivener within the meaning of the Bankrupt Acts, the defendants called several witnesses who had, at various times, deposited money with the bankrupt, and who still continued to be his creditors. It was objected, that those witnesses being creditors, were not competent, for that the action was in effect defended on their behalf. Lord Denman, who presided at the trial at Nisi Prius, overruled the objection and admitted the evidence, and the defendants had a verdict.

The *Attorney-General*, for the plaintiff, now moved for a rule to show cause why the verdict should not be set aside and a new trial had, on the ground that the evidence of creditors had been improperly received to prove the trading, and contended that by the act 6 & 7 Vict. c. 85, in an action to try the validity of a fiat, creditors of the bankrupt were not competent witnesses to sustain the fiat.

Rule *nisi* granted.

April 19.—*Ferris* v. *Curzon*—Rule *nisi* to set aside warrant of attorney on the ground of its having been obtained by fraud.

— 19.—*Leary* v. *Patrick*—Rule *nisi* to enter verdict for the plaintiff.

— 19.—*Reg.* v. *Bishop of Exeter*—Rule *nisi* to set aside replications, or until electing one, the proceedings to be stayed.

— 19.—*Doe d. Sayer and others* v. *Hatton*—Rule *nisi* for new trial on the ground of misdirection, and improper admission of evidence.

— 19.—*Barwell and others* v. *Winterstone Hundred*—Rule *nisi* to enter verdict for defendants, on the ground that the action would not lie.

— 20.—*Charman* v. *Steere*—Rule *nisi* to set aside verdict and for new trial, on the ground that the verdict was against evidence.

— 20.—*Barker* v. *Collins*—Rule to reduce damages or for new trial on leave reserved, refused.

— 20.—*Leary* v. *Patrick*—Rule for new trial refused on the ground of irregularity.

— 21.—*Wilkinson* v. *Willatt*—Rule refused to enter verdict for the plaintiff on leave reserved.

— 21.—*Doe d. Morison* v. *Plummer*—Rule *nisi* on the ground that the society was illegal.

— 21.—*Doe d. Devendish* v. *Moffatt*—Rule *nisi* to enter verdict for plaintiff.

— 23.—*Doe d. Lord Arundell* v. *Fowler*—Rule *nisi* for new trial on the ground that the verdict was against evidence.

— 23.—*Harper* v. *Clarke*—Rule *nisi* for new trial on the ground of misdirection, and that the verdict was against evidence.

— 23.—*Marson* v. *Lund*—Rule *nisi* to stay proceedings until debt proved before the Master.

— 23.—*Anon.*—Rule *nisi* for attorney to answer matters alleged in affidavit, and pay over the amount found due.

— 23.—*In re National Land Company*—

Rule absolute on Registrar to show cause why he refused to register the company.

April 24.—*Green and others (assignees,) v. St. Katharine's Dock Company.*—*Cur. ad. vult.*

Queen's Bench Practice Court.

Haddon v. *Shearman.* April 16, 1849.

COUNTY COURT. — PROHIBITION. — MULTIPLICITY OF ACTIONS.

Where four actions were brought for breaches of an agreement which might all have been included in one action, the Court will grant a prohibition.

THIS was an application for a prohibition to the judge of the Bloomsbury County Court, under the following circumstances. The defendant had taken part of a house under an agreement, and a certain yearly rent was to be paid to the plaintiff, and certain arrangements were also made with regard to coals, gas, and servants. The plaintiff had brought four actions in the County Court in question for four breaches of the agreement.

Creasy, in support of the application, urged that all the arrangements were included in the one agreement, and that, therefore, one action was sufficient.

The *Court* granted the rule.

April 19.—*Lewis* v. *Clifton* — Rule *nisi* to restrain the defendant's attorney from proceeding to tax his costs.

— 19.—*Reg.* v. *Jacobs*—Stand over.

— 19.—*Anon.*—Rule *nisi* for attorney to pay over money received by him.

— 19.—*Halkin* v. *Lord Talbot*—Rule *nisi* to issue execution against shareholder in a ship insurance company.

— 20.—*Reg.* v. *Featherstone*—Certiorari granted to bring up depositions and admit to bail.

— 21.—*In re Price*—Rule *nisi* for attorney to pay over a bill of costs pursuant to his undertaking.

— 23.—*Exparte Blane*—Rule *nisi* to quash order of Quarter Sessions.

— 24.—*Reg.* v. *Manchester, Sheffield, and Lincolnshire Railway Company*—Mandamus to railway company to summon jury to assess damages.

— 24.—*In re Cox and another*—Rule *nisi* to send back orders removed by certiorari to be amended.

— 24.—*In re Clarke*—Certiorari to remove order in bastardy made by Suffolk justices.

— 25.—*Walker* v. *Hewlett*—Rule *nisi* to set aside writ of *ca. sa.* and discharge defendant from custody.

Common Pleas.

Frances v. *Webb.* April 16, 1849.

ATTORNEY'S CLAIM FOR COSTS. — PAUPER.

Where a plaintiff and defendant settle an action without paying the plaintiff's attorney's costs, but without any collusion to defraud the attorney, the Court will not allow the attorney to proceed in the action for his costs.

THE plaintiff, a builder, had done work for the defendant, who had a counter claim against him, and not agreeing as to the settlement, brought an action to recover the balance, suing *in formâ pauperis.* The case was referred to arbitration, but, no award being made, it was proceeded with, and set down for trial. Before trial, however, the action was settled without consulting the attorney, the defendant paying the plaintiff 100*l.* The costs not being paid, the attorney proceeded with the action. A rule *nisi* to stay proceedings was then obtained.

Parry and *Metcalfe* against the rule; *Byles*, S. L., and *Archbold*, in support.

Per Curiam. No collusion to defraud the attorney had been proved to exist between the plaintiff and the defendant, and the defendant was not bound in such a case as the present to see that the attorney was paid his costs. In an action *in formâ pauperis*, the Court would always see that the attorney was not defrauded by any improper collusion. The rule, therefore, would be made absolute.

Crosfield v. *Morison.* Feb. 12, 1849.

SUB-LEASE. — COVENANT TO INDEMNIFY AGAINST BREACHES.

Held, *that a covenant in a sub-lease to indemnify the sub-lessor against the breach of covenants in the original lease, was unqualified and not restricted by non-occupation.*

THE declaration in an action of covenant alleged that plaintiff, as original lessee of a colliery, remained liable to pay the rents, and observe the covenants contained in the lease;—that the plaintiff, by an indenture of 1st Jan. 1840, in consideration of 1,575*l.* to be paid by the defendant, assigned the colliery to one John Reed, in trust for defendant. In case, however, of default in paying the said sum at the time fixed, Reed was to sell and dispose of the colliery on certain other trusts. The defendant covenanted to pay the rents, &c., and to indemnify the plaintiff from all breach of covenants contained in the original lease. Various sums of money became due for the rent, and the plaintiff was in consequence obliged to pay the same to the reversioner. Several pleas were pleaded, and the issues on all were found for the plaintiff, with the exception of the third plea, which alleged that the defendant was not in possession of the colliery when the rents became due, and were paid by the plaintiff, and which was entered for the defendant; and the question was, whether this plea furnished a good answer to the action. A rule had been obtained, calling on the defendant to show cause why judgment should not be entered for the plaintiff *non obstante veredicto.* It was contended that the defendant was only to pay rent while he was in possession, and that the covenant to indemnify was also similarly restricted.

The *Court* was of opinion, that, having reference to the intention of the parties, as shown by the general terms used, the covenant to indemnify was unqualified, and that the rule must, therefore, be made absolute.

April 19.—*Stansfield and others, assignees*, v. *Gladstane*—Rule *nisi* for new trial, on the ground that the verdict was against evidence.

— 19.—*Kincairn* v. *Willis*—Rule *nisi* for new trial, or to enter verdict for defendant, on the issue of not guilty, upon the ground that the verdict was against evidence. Cross rule *nisi* to enter verdict for plaintiff on the only issue found for defendant.

— 19.—*Newbury Gaslight Company* v. *Binney*—Rule *nisi* to set aside verdict and for new trial, on the ground that the verdict was against evidence.

— 20.—*Doe d. Strickland* v. *Strickland*—Rule *nisi* to set aside verdict and new trial had, on the ground of misdirection.

— 20.—*Ewbank* v. *Nutting and Ord*—Rule for new trial refused.

— 21.—*Goddard* v. *Dobson and Leybourn*—Rule for new trial refused.

— 21.—*Greville* v. *Walter*—Rule *nisi* to stay proceedings in issue until plaintiff should have proved his right before a Master in Chancery.

— 23, 24.—*Kenning* v. *Buchannan*.—Part heard.

— 24.—*Pritchett* v. *Smart*—Rule to produce to defendant the plaintiff's broker's book refused.

— 25.—*Reed* v. *Shoushall*—Demurrer to suggestion to deprive of costs under the County Courts' Act allowed—Judgment for plaintiff.

Court of Exchequer.

Jones v. *O'Hare*. April 20, 1849.

OBJECTION TO ATTORNEY'S BILL.—WHEN NOT AVAILABLE UNDER GENERAL ISSUE.

An objection that an item contained in an attorney's bill is too vague to be a compliance with the requirements of the statute 6 & 7 Vict. c. 73, cannot be taken advantage of under the general issue.

Semble, *that such an objection is available under the plea that no signed bill has been delivered under the statute.*

DEBT on an attorney's bill for 22*l.* 1*s.* 11*d.* Plea "Never indebted." Upon the production of the bill at the trial, it was found to contain an item as follows:—"In the Bristol District Court of Bankruptcy. Conducting proceedings for you, &c., 3*l.* 3*s.*;" and it was contended, that such a description of the business done, was not a sufficient compliance with the statute, being much too vague and general. The learned judge who presided ruled that the objection could not be taken advantage of under the plea of "Never indebted."

Carrington now moved to set aside the verdict, or reduce the damages, on the ground that the objection was properly taken under the plea of "Never indebted." No doubt, under the old law, the objection that an item in an attorney's bill was insufficient could only be taken under a plea that no signed bill was delivered, but the last Attorneys' and Solicitors' Act, (6 & 7 Vict. c. 73, s. 37,) contained a new provision, which it was submitted altered the law in this respect.

Rolfe, B. We are constantly in the habit of acting at chambers under the notion that such a defence must be specially pleaded.

Carrington. It was so under the old law, but the 6 & 7 Vict. c. 73, s. 37, provides, that "nevertheless it shall be competent for the other party to show that the bill so delivered, sent, or left, was not such a bill as constituted a *bonâ fide* compliance with this act. Here was a new provision, which it was contended entitled the defendant, without any special plea, to show that the bill delivered was insufficient.

Parke, B. Though the act says "it shall be competent for the other party to show," it must be construed to mean under a proper plea. If the sufficiency of the bill is meant to be disputed, it may be done under the plea that no signed bill was delivered under the statute, but not under the plea of never indebted. Rule refused.

April 19.—*London, Brighton, and South Coast Railway Company* v. *Goodwin, sen.*—Rule refused to reduce the damages recovered to a nominal sum.

— 19.—*Midland Great Western Railway Company* v. *Farquhar, Same* v. *Masterman*—Rule *nisi* to reduce damages.

— 19.—*Hingeston* v. *Sir Fitzroy Kelly, Q.C.* Rule *nisi* to set aside verdict and for new trial, on the ground of misdirection and that the verdict was against evidence.

— 29.—*Long* v. *Bignold*—Rule *nisi* to enter verdict for defendant, or enter nonsuit on leave reserved.

— 20.—*Douglass* v. *Douglass*—Rule *nisi* on the ground of misdirection.

— 21.—*Caufield* v. *Blenkinsopp*—Rule *nisi* for new trial.

— 21.—*Acomb* v. *Rawson*—Rule *nisi* to enter nonsuit upon leave reserved.

— 21.—*Grapes* v. *Bunney*—Rule *nisi* for new trial, on the ground that the plea of justification was not proved.

— 21.—*Mason* v. *Cole and another*—Rule *nisi* to set aside nonsuit and for new trial.

— 23.—*Stuart* v. *Sloper and another*—Rule for new trial refused.

— 23.—*Fryer* v. *Gathercole*—Rule *nisi* for new trial, on the ground of improper rejection of evidence.

— 23.—*Cobbett* v. *Sir G. Grey and another*—Stand over.

— 23.—*Scarisbrick and others* v. *Kennard*—Rule *nisi* for new trial.

— 23—*Rice* v. *Sir John Gerrard*—Rule *nisi* for new trial on the ground of misdirection.

— 24.—*Wakley* v. *Healey*—Rule *nisi* for new trial, on the ground of misdirection.

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